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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

*In re Wells Fargo Mortgage Discrimination  
Litigation*

CASE NO. 3:22-cv-00990-JD

The Hon. James Donato

**NOTICE OF PENDENCY OF OTHER  
ACTION FILED BY SHAIA SIMMONS IN  
THE NORTHERN DISTRICT OF  
FLORIDA**

Pursuant to Local Rule 3-13, Defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (“Defendants”) provide notice to this Court of a new action now pending in the Northern District of Florida: *Simmons v. Wells Fargo Bank, N.A. et al.*, 4:24-cv-00089-AW-MAF (N.D. Fla.) (“*Simmons* Action”). The *Simmons* action rehashes the same allegations as to Plaintiff Simmons’s loan as pleaded in this Court, the same subject matter at issue and substantially the same parties as the above-captioned action.

Shaia Beckwith Simmons (“Plaintiff Simmons”) filed the *Simmons* Action in the Northern District of Florida on February 22, 2024.<sup>1</sup> Pursuant to Local Rule 3-13(b)(2), a true and correct copy of the Complaint in the *Simmons* Action is attached hereto as **Exhibit A**. Simmons alleges she filed the *Simmons* Action “out of an abundance of caution because she has reason to believe the consolidated class action may not cover her individual claims related to Wells Fargo’s [allegedly] racially discriminatory treatment.”

The only Plaintiff in the *Simmons* Action, Shaia Beckwith Simmons, is also an “illustrative” Plaintiff in this action, a member of this action’s putative class, and a former putative class representative prior to the consolidation of cases here. The allegations she asserts in the *Simmons* Action are the same allegations that she relies upon in this action as “harm . . . typical of the class.”

As a result, on March 8, 2024, Defendants filed a Motion to Dismiss the *Simmons* Action based upon the “first-to-file” rule. Alternatively, Defendants moved for the *Simmons* Actions to be transferred to this Court based upon both the “first-to-file” rule and 28 U.S.C. § 1404(a) (the “Motion”). A true and correct copy of the Motion is attached hereto as **Exhibit B**. Defendants’ Motion is currently pending before the Honorable Allen Winsor in the Northern District of Florida.

### **DUPLICATION OF THE CURRENT PROCEEDINGS AND *SIMMONS* ACTION**

The allegations that form the basis of the *Simmons* Action have been asserted twice before in complaints filed with this Court.

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<sup>1</sup> Despite inviting Defendants to accept service on February 29, 2024, Plaintiff served Defendants the same day.

On April 14, 2022, Plaintiff Simmons was named as a putative class representative in the *Williams* Amended Complaint filed against Defendants in the Northern District of California. *Williams v. Wells Fargo, N.A.*, 3:22-cv-00990-JD, ECF No. 22) (N.D. Cal.). In the *Williams* Amended Complaint, Plaintiff Simmons alleged she was subjected to the same racial discrimination by Wells Fargo's mortgage lending processes as she alleges in the newly filed *Simmons* Action. Ex. A ¶¶ 33-42 *cf. Williams*, ECF No. 22, ¶¶ 36-43. The *Williams* Amended Complaint included Plaintiff Simmons' "individual and class complaints" against Defendants. *Williams*, ECF No. 22, ¶ 29. In the *Williams* Amended Complaint, Plaintiff Simmons asserted four claims against Defendants for violation of: (1) the Equal Credit Opportunity Act ("ECOA"), (2) 42 U.S.C. § 1981, (3) 42 U.S.C. § 1982, and (4) the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* These four claims, based upon the same factual allegations, are also asserted against Defendants in the newly filed *Simmons* Action (along with others). Ex. A ¶¶ 44-62 *cf. Williams*, ECF No. 22, ¶¶ 52-74. Indeed, the same law firm that represented Simmons in *Williams*, Ben Crump, PLLC, also filed the latest *Simmons* Action. Ex. A at 24 *cf. Williams*, ECF No. 22, at 19.

In January 2023, this Court consolidated *Williams* with five other putative class action lawsuits into *In re Mortgage Lending Discrimination*, pending before this Court. ECF No. 102. Following consolidation, an amended and consolidated complaint ("Consolidated Amended Complaint") was filed on March 24, 2023 with Dennis Ellis of Ellis George named as Interim Lead Counsel. ECF No. 114.

The Consolidated Amended Complaint identifies Plaintiff Simmons as a member of the putative class under Federal Rule of Civil Procedure 23, describes Plaintiff Simmons' experience as being "typical of the class" of consumers purportedly injured in this litigation, and includes allegations specific to Plaintiff Simmons and her loan that mirror those alleged in the *Simmons* Action. Consolidated Amended Complaint, at Heading I ("Plaintiffs' Harm is Typical of the Class"); ¶ 139-144 (describing how Simmons' allegations are illustrative of the putative class' purported harm).

The Consolidated Amended Complaint defines its proposed class as: "all Minority Applicants in the United States who, from January 1, 2018 through the present (the "Class

Period”), submitted an application for a original purchase or other home mortgage loan or to refinance or modify a home mortgage loan through Defendants that was (i) denied; (ii) approved at higher interest rates or subject to less favorable terms as compared to similarly situated non-Minority Applicants; or (iii) processed at a rate slower than the average processing time of applications submitted by similarly situated non-Minority Applicants.” *Id.* ¶ 155. Likewise, in the *Simmons* Action, Plaintiff Simmons purports to recover based on her injuries as a result of Defendants’ “racially discriminatory residential mortgage and lending policies and practices.” Ex. A ¶ 6. Tellingly, in both cases, the same claims for violation of: (1) the Equal Credit Opportunity Act, (2) 42 U.S.C. § 1981 and (3) the Fair Housing Act, among others, are brought against Defendants. *Compare* Consolidated Amended Complaint, ¶¶ 175-193, with Ex. A ¶¶ 41-62.

**THE ALLEGATIONS ASSERTED BY SIMMONS IN THE *SIMMONS* ACTION ARE THE SAME ALLEGATIONS SHE ASSERTS IN THE CONSOLIDATED AMENDED COMPLAINT**

In the *Simmons* Action, Plaintiff Simmons alleges she was subjected to the same racial discrimination by Wells Fargo’s mortgage lending processes as she alleges in the *In re Mortgage Lending Discrimination* matter pending before this Court. Ex. A ¶¶ 33-42 *cf.* Consolidated Amended Complaint ¶¶ 140-144.

In both cases, Plaintiff Simmons alleges she was injured as part of Defendants’ nationwide policy of conducting “mortgage origination, approvals, interest rate determinations, fees, costs, refinancing, underwriting, deferment, forbearance, default, loan steering, and foreclosure policies and practices [in a manner] that intentionally and disproportionately discriminate against and harm Black and/or African American home loan applicants and home mortgage borrowers.” *Id.* ¶ 6 *cf.* Consolidated Amended Complaint ¶¶ 5, 15, 23, 126-130.

As in the instant action, Plaintiff Simmons asserts in her duplicative action that these policies are part of a “nationwide set of uniform” discriminatory policies enacted by Defendants and implemented across the United States. Ex. A ¶¶ ¶¶ 47, 52, 56, 61 *cf.* Consolidated Amended Complaint ¶ 143. Plaintiff contends that her experience is part of Defendants’ “long history of racial discrimination and . . . corporate culture replete with harmful racial stereotypes and biased

views about Black and/or African American customers.” Ex. A ¶¶ 7 *cf.* Consolidated Amended Complaint ¶¶84-90. Based on these allegations, Simmons bring claims against Defendants in both the *Simmons* Action and in *In re Mortgage Lending Discrimination* for violation of: (1) ECOA, (2) 42 U.S.C. § 1981 and (3) the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* The *Simmons* Action also includes claims for: (1) 42 U.S.C. § 1982, (2) intentional infliction of emotional distress, (3) breach of contract, (4) promissory estoppel, (5) fraudulent inducement, and (6) negligent misrepresentation.

Simmons alleges she filed the *Simmons* Action “out of an abundance of caution because she has reason to believe the consolidated class action may not cover her individual claims related to Wells Fargo’s [allegedly] racially discriminatory treatment.” Ex. A ¶ 30.

#### **COORDINATION OF THE DUPLICATIVE PROCEEDINGS IS WARRANTED**

At a minimum, the *Simmons* Action is substantially similar in both form and substance to this action. More appropriately, the *Simmons* Action is encompassed within the currently-pled action that derives from same underlying factual allegations. Because the instant action has already progressed significantly into discovery, mutual transfer to a Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. § 1407 is not required or appropriate. However, to the extent the Florida court does not dismiss the case, coordination of the *Simmons* Action with the instant action—or even consolidation of the actions—on overlapping disputes between the parties, will prevent unnecessarily repetitive motions practice, duplicative discovery, and will prevent potentially inconsistent obligations in various forums between these parties.

Dated: March 8, 2024

**MCGUIREWOODS LLP**

*/s/ Alicia A. Baiardo*

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2024, I electronically filed the foregoing document entitled **NOTICE OF PENDENCY OF OTHER ACTION IN THE NORTHERN DISTRICT OF FLORIDA** with the Clerk of the Court for the United States District Court, Northern District of California using the CM/ECF system and served a copy of same upon all counsel of record via the Court's electronic filing system.

Dated: March 8, 2024

By: /s/ Alicia A. Baiardo  
Alicia A. Baiardo

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

SHAIA BECKWITH SIMMONS,

Plaintiff,

v.

WELLS FARGO BANK, N.A. and  
WELLS FARGO & CO.,

Defendants.

CASE NO:

**COMPLAINT**

Class Action

Jury Trial Demanded

**COMPLAINT**

Plaintiff Shaia Beckwith Simmons (“Simmons”), by and through her attorneys, hereby files this Complaint against Defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (collectively “Wells Fargo” or the “Firm”), and states as follows:

**JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343. In addition, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d), as the amount in controversy exceeds \$75,000, Plaintiff is a citizen of Florida, and Defendants are citizens of South Dakota, Delaware, and California.

2. Venue is proper in the Northern District of Florida pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this District. Venue is proper in the Tallahassee Division of the Northern District of Florida because a substantial part of the events or omissions giving rise to the claims occurred in the county of Gadsden.

### **PARTIES**

3. Defendant Wells Fargo & Co. is a publicly-traded, global financial services firm and Fortune 500 corporation incorporated in Delaware and has its principal place of business in San Francisco, California. As of September 30, 2023, Wells Fargo has assets of approximately \$1.9 trillion, loans of \$942 billion, deposits of \$1.3 trillion and stockholders' equity of \$182 billion.<sup>1</sup> Wells Fargo provides a wide variety of financial products and services to its global and domestic clients, who include corporations, governments, financial institutions and individuals, including home mortgages. Wells Fargo claims to serve at least one out of three households in the United States.<sup>2</sup>

4. Defendant Wells Fargo Bank, N.A. is a national banking association chartered in South Dakota with its principal place of business in San Francisco, California, and a subsidiary of Wells Fargo & Co.

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<sup>1</sup> <https://www.wellsfargo.com/assets/pdf/about/investor-relations/sec-filings/2023/third-quarter-10q.pdf>

<sup>2</sup> <https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable->

5. Plaintiff Shaia Beckwith Simmons is African American and a citizen and resident of Florida. As described below, Plaintiff Simmons obtained a home mortgage with Wells Fargo and was subjected to Wells Fargo's racially discriminatory policies and practices.

### **FACTUAL ALLEGATIONS**

6. As stated above, Wells Fargo is one of the largest banks in the country and one of the top residential mortgage providers in the United States. Across the country, Wells Fargo applies mortgage origination, approvals, interest rate determinations, fees, costs, refinancing, underwriting, deferment, forbearance, default, loan steering, and foreclosure policies and practices that intentionally and disproportionately discriminate against and harm Black and/or African American home loan applicants and home mortgage borrowers. Simmons was injured by Wells Fargo's racially discriminatory residential mortgage and lending policies and practices.

7. Wells Fargo has a long history of racial discrimination and maintains a corporate culture replete with harmful racial stereotypes and biased views about Black and/or African American customers.

8. Wells Fargo discriminates against Black and/or African American customers throughout its lending process, from application—where Wells Fargo disproportionately denies credit to Black and/or African American applicants—to origination—where Wells Fargo disproportionately charges higher interest rates, imposes higher fees and costs, and offers worse terms to Black and/or African Americans compared to non-Black, non-African Americans—to refinancing—where Wells Fargo disproportionately denies Black and/or African Americans the opportunity to modify or lower their interest rates—and servicing—where Black and/or African American borrowers are subjected to additional racial discrimination.

9. Wells Fargo has faced a number of recent lawsuits and settlements challenging these practices and disparities. For example, in 2011, a jury found Wells Fargo guilty of systematically discriminating against minority home buyers by using a computer software for minority homeowners which resulted in them paying more for their home loans than white borrowers. *Opal Jones, et. al v. Wells Fargo Bank, N.A., et al.*, Case No. BC337821 (Los Angeles Superior Court) (\$3.5 million verdict). Wells Fargo has also paid hundreds of millions of dollars to avoid litigating its discriminatory home lending practices. Indeed, Wells Fargo agreed to a settlement valued at over \$440 million of a lawsuit challenging the Firm's redlining practices, resulting in a disproportionate number of foreclosures in

African American neighborhoods in Shelby County and the City of Memphis. *City of Memphis and Shelby County, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 2:09-CV-02857 (W.D. Tenn.). Wells Fargo also settled a lawsuit for \$37 million led by the National Fair Housing Alliance alleging that Wells Fargo took better care of foreclosed properties that it owned in white neighborhoods than those in African American and Latino communities. *National Fair Housing Alliance, et al. v. Wells Fargo Bank N.A., et al.*, HUD Case No. 09-12-0708-8 (U.S. Department of Housing & Urban Development Office of Fair Housing & Equal Opportunity).

10. Wells Fargo has also faced and settled numerous lawsuits challenging its “reverse redlining” practices of charging higher rates and imposing less favorable terms for minority home borrowers than for white home borrowers. For instance, in 2013, Wells Fargo paid \$175 million to settle a lawsuit brought by the United States Department of Justice alleging that the Firm charged higher rates to its African American and Latino borrowers. *United States v. Wells Fargo Bank, NA*, Case No. 1:12-cv-01150 (D.D.C.).

11. In 2019, Wells Fargo paid \$10 million to settle a similar claim brought by the City of Philadelphia. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-02203-AB (E.D. Pa. 2019). Philadelphia alleged that Wells Fargo simply swapped the evil of redlining—refusing to lend to minority communities—for the similarly pernicious reverse redlining—lending to minority borrowers, but

saddling them with more expensive loans with worse terms than those extended to white borrowers. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-02203-AB (E.D. Pa. 2019), Dkt. 1 (Complaint) ¶¶ 5–21. Philadelphia alleged that “since at least 2004 . . . Wells Fargo has systematically engaged in a continuous and unbroken discriminatory pattern and practice of issuing higher cost or more onerous mortgage loans to minority borrowers in Philadelphia when more favorable and less expensive loans were being offered to similarly situated non-minority borrowers.” *Id.* ¶ 5 (E.D. Pa.). Philadelphia’s statistical analysis revealed that African American borrowers were more than twice as likely to “receive a high-cost or high-risk loan” than a white borrower even when controlling for credit score. *Id.* ¶ 14. Indeed, the discrimination worsened as the credit score increased—especially creditworthy “African-Americans with FICO scores over 660 were 2.570 times more likely to receive a high-cost or high-risk loan from Wells Fargo as a white borrower.” *Id.* The predictable result of Wells Fargo’s foisting high-cost, high-risk loans on African Americans was an explosion of foreclosures in minority communities, where loans were “4.710 times more likely to result in foreclosure than is a loan in a predominantly white neighborhood.” *Id.* ¶ 12. This precipitated what “many leading commentators describe[d] as the ‘greatest loss of wealth for people of color in modern US history.’” *Id.* ¶ 18.

12. Other cities and counties have sued Wells Fargo for its discriminatory home lending practices. The City of Baltimore filed a lawsuit against Wells Fargo under the Fair Housing Act, in the U.S. District Court for the District of Maryland, Baltimore Division. The plaintiffs, alleging that Wells Fargo had engaged in predatory and discriminatory lending practices that had led to foreclosures harming the city, asked the court for declaratory and injunctive relief and damages. *City of Baltimore v. Wells Fargo Bank, N.A.*, Case No. 08-cv-00062 (D. Md.).

13. The city of Miami brought a lawsuit under the Fair Housing Act against Wells Fargo. In its suit, Miami alleged that Wells Fargo Bank engaged in discriminatory lending practices and that, as a result of these practices, Miami suffered an appreciable loss of property tax revenue as well as an attendant increase in the costs of municipal services the city provided. These increased costs, the city alleged, were a result of Wells Fargo's discriminatory lending practices. *City of Miami v. Wells Fargo Bank, N.A.*, Case No. 13-cv-24508 (S.D. Fla):

14. The city of Los Angeles filed a suit asserting two claims for (1) violating the federal Fair Housing Act, and (2) common-law restitution. According to the City, Defendants engaged in discriminatory lending practices that resulted in a disparate number of foreclosures in minority areas of Los Angeles. Specifically, the City alleged that Defendants have engaged in "redlining" and "reverse

redlining.” *The City of L.A. v. Wells Fargo Bank, N.A.*, Case No. 13-cv-9007 (C.D. Cal.):

15. Cook County filed a Fair Housing Act suit against Wells Fargo, alleging that Wells Fargo engaged in discriminatory lending practices against minority borrowers. Cook County alleged that Wells Fargo issued predatory subprime mortgage loans to Cook County residents that over the years went into default and drove the mortgaged properties into foreclosure. According to the County, the scheme was and remains concentrated in heavily minority neighborhoods. *Cook Cnty. v. Wells Fargo Bank, N.A.*, Case No. 14-cv-9548 (N.D. Ill.).

16. The City of Miami Gardens filed suit against Wells Fargo, alleging that Wells Fargo violated the Fair Housing Act by steering Black and Hispanic borrowers into highercost loans than similarly situated white borrowers. *City of Miami Gardens v. Wells Fargo Bank, N.A.*, Case No. 14-cv-22203 (S.D. Fla.):

17. Wells Fargo found new avenues to discriminate against Black and/or African American customers with changes to the home mortgage market. Nationwide, homeowners had the opportunity to take advantage of historically low interest rates through refinancing, which occurs when a homeowner applies for credit related to their residential real estate to change the terms of an earlier loan. Over the last two years, U.S. homeowners refinanced almost \$5 trillion in

mortgages, generating untold savings. This could have been an opportunity for African American homeowners to build wealth and secure their families' futures. Wells Fargo, however, systematically and intentionally shut Black and/or African American customers out of this major wealth event. According to an analysis of 2020 Home Mortgage Disclosure Act data, Wells Fargo approved 33.7% of refinancing applications from Black and/or African American applicants, compared with 49.1% from white applicants. Wells Fargo denied Black and/or African Americans borrowers' applications outright 36.1% of the time, versus 20.3% of the time for white borrowers. These disparities are statistically significant at over 31 standard deviations.

18. And just as it does with home purchase loans, Wells Fargo charges higher costs and interest rates to Black and/or African American customers who obtain refinancing. In 2020, Wells Fargo charged the average national Black and/or African American refinancing recipient 3.18% versus 3.11% for white refinancing recipients, and charged Black and/or African American customers an average of \$5,335 in costs and fees versus \$4,193 for white borrowers, for an average cost of borrowing of 2.6% for Black and/or African American customers versus 1.8% for white borrowers. All these disparities are statistically significant.

19. Wells Fargo's failure to extend refinancing and other home loans to Black and/or African American customers has even drawn the attention of

members of Congress. Senators Elizabeth Warren and Ron Wyden recently wrote a letter to Wells Fargo’s Chief Executive Officer Charles Scharf excoriating the Bank for its “shocking disparity” in its approval ratings of Black and/or African American refinancing applicants.<sup>3</sup> The Senators stated that Wells Fargo’s recent actions were consistent with “Wells Fargo's long history of scamming and mistreating consumers of color.”<sup>4</sup> Furthermore, the Senators believed “Wells Fargo’s treatment of Black borrowers is deeply concerning, no matter how one looks at the data” and concluded, “Wells Fargo appears to be simply unable or unwilling to stop preying upon customers of color.”<sup>5</sup>

20. Just recently, the Consumer Financial Protection Bureau (“CFPB”) issued a notice to Wells Fargo regarding problems with its use of mortgage rates discounts. In the CFPB’s review it found “statistically significant disparities” in the rates in which Black borrowers got pricing exceptions compared with other customers.

21. Wells Fargo engages in predatory lending practices to force Black and/or African American borrowers to accept less favorable terms and in rare instances where Black and/or African American receive favorable terms,

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<sup>3</sup>Letter from Senators Elizabeth Warren and Ron Wyden, March 16, 2022 <https://www.warren.senate.gov/imo/media/doc/2022.3.16%20Letter%20to%20Wells%20Fargo%20on%20Refinancing%20Discrimination.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

pressuring Black and/or African American borrowers to increase their rates by improperly treating Black and/or African American borrowers' loans in default and instituting improper foreclosures.

22. Wells Fargo continued to pursue new discriminatory and predatory lending practice during the COVID-19 pandemic.

23. The Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act") provided a variety of emergency financial relief due to the unprecedented economic interruptions of the pandemic, including a moratorium on foreclosures and requiring certain mortgage lenders to offer a forbearance program for those experiencing economic hardship. CARES Act § 4022(b).

24. Under the CARES Act, certain federally-backed mortgage borrowers could obtain up to 360 days of forbearance of mortgage payments by requesting forbearance and "affirming that the borrower was experiencing a financial hardship during the COVID-19 emergency." CARES Act § 4022(b)(1)-(2).

25. However, through its unscrupulous practices, Wells Fargo used CARES Act deferrals as a mechanism to extract wealth from Black homeowners, generating delinquencies and foreclosures by deliberately targeting Black homeowners for easy entry into forbearance but obfuscating the repayment requirements after the end of forbearance.

26. Rather than eliminate the discrimination, Wells Fargo devoted enormous resources to barring its own top executives, the public, and shareholders from learning about the racial discrimination against its customers. For example, Wells Fargo’s internal reports routinely dismiss significant racially disparate outcomes as “practically” not significant. It also hires outside law firms paid for by Wells Fargo to conduct investigations or “audits” of serious discrimination allegations only to deny them and to support a false public narrative that it remains committed to inclusivity and its stated, but not practiced, policies of non-discrimination.

27. Wells Fargo discriminates against its African American employees just as readily as it does its customers. In 2016, Wells Fargo was charged with systemic discrimination against minority Financial Advisors including by African American Financial Advisors in the class action lawsuit *Slaughter v. Wells Fargo Advisors*, 14-cv-06368 (N.D Ill. 2014). Wells Fargo eventually settled the *Slaughter* litigation for over \$35 million. *Slaughter v. Wells Fargo Advisors*, 14-cv-06368 (N.D Ill. 2014), Dkt. 99-1.

28. On February 17, 2022, Christopher Williams filed a class-action complaint challenging Wells Fargo’s racially discriminatory lending practices. (*Williams v. Wells Fargo, N.A.*, 22-cv-00990, Compl., Dkt. 1). After *Williams* was filed, four other class action lawsuits were filed similarly challenging Wells

Fargo's discriminatory mortgage practices. *Braxton v. Wells Fargo Bank, N.A.*, 22-cv-01748 (N.D. Cal. 2022); *Pope v. Wells Fargo Bank, N.A.*, 22-cv-01793 (N.D. Cal. 2022); *Ebo v. Wells Fargo Bank, N.A.*, 22-cv-02535 (N.D. Cal. 2022); *Perkins v. Wells Fargo, N.A.*, 22-cv-03455 (N.D. Cal. 2022); *Thomas v. Wells Fargo & Co.*, No. 3:22-cv-01931-JD (S.D.N.Y. 2022).

29. Counsel for *Williams* previously included Simmons' as a named putative class representative in an Amended Complaint on April 14, 2022, that included both her individual and class complaints, and which Wells Fargo Answered. (*Williams*, Dkts. 22, 50-51). The Court consolidated all five lawsuits against Wells Fargo, requiring a Consolidated Complaint to be filed, and appointed Interim Class Counsel for the consolidated matter. (*Williams*, Dkts. 75, 102, 111). Interim Class Counsel filed a consolidated class complaint which did not include Simmons as a Class Representative but included her allegations in the Amended Consolidated Complaint as a Class Member. (Dkt. 114).

30. While Simmons believes her claims are tolled pursuant to the *American Pipe* Tolling doctrine, she files this complaint out of an abundance of caution because she has reason to believe the consolidated class action may not cover her individual claims related to Wells Fargo's racially discriminatory treatment.

**PLAINTIFF WAS INJURED BY DEFENDANTS’  
DISCRIMINATORY POLICIES AND PRACTICES**

31. Plaintiff Shaia Beckwith Simmons is a public relations expert, community advocate, motivational speaker, and a school principal, with a Bachelor’s in Business Administration and Management and a Master’s in Educational Leadership and Administration from Florida A&M University. She and her husband, a Division I football coach, are pillars of their local community.

32. Simmons is a well-qualified African American home borrower who obtained a home mortgage loan in 2009 that Wells Fargo later purchased, and refinanced it with Wells Fargo for a lower interest rate in 2013.

33. During the COVID-19 pandemic, as required by the CARES Act, Wells Fargo offered existing home mortgage borrowers the option to defer their payments.

34. Wells Fargo solicited Simmons to seek forbearance by telephone, and because her family experienced a temporary reduction in income during the pandemic, Simmons accepted. Simmons’s telephone conversation enrolled her in a three-month forbearance program.

35. Simmons understood Wells Fargo’s forbearance program to be a simple deferment, which allowed her to restructure her loan to tack payments she missed during the forbearance period on at the end of her loan. A Wells Fargo

representative repeatedly confirmed her understanding over the phone that she would make up for the missed payments at the end of her loan.

36. Toward the end of her first three months of forbearance, Wells Fargo again initiated a call to Simmons asking whether she wished to extend forbearance, and she again agreed. Wells Fargo would repeat this process two more times, resulting in Simmons deferring 12 months of mortgage payments during forbearance.

37. At the end of the forbearance period, Simmons promptly resumed making her mortgage payments in full, as she had done for many years.

38. Contrary to its repeated assertions to Simmons, Wells Fargo immediately treated the deferred payments during the forbearance period as a delinquency, rather than deferring them.

39. Yet consistent with its nationwide discriminatory practices and treatment, Wells Fargo maliciously instituted foreclosure proceedings against Simmons in February 2022, asserting that Simmons was in default for failure to make mortgage payments during her forbearance, and causing Simmons severe emotional distress.

40. Consistent with its nationwide practices of predatory lending to extract wealth from Black and/or African American customers, Wells Fargo pressured Simmons to modify her loan, potentially at a higher interest rate that

would cost her many thousands of dollars over the remaining life of the loan, as her means to avoid the malicious foreclosure to take her home away from her and resell it in a booming market.

41. Simmons declined to modify her loan and resisted the wrongful foreclosure until it was dismissed in August 2022.

42. Though Simmons was eventually able to defer her forbearance payments to the end of the loan through a partial claim mortgage, she ended up owing more in fees and costs due to Wells Fargo's wrongful and discriminatory actions.

43. Wells Fargo's unlawful actions have caused Simmons emotional distress and financial harm, in an amount to be proven at trial.

## **COUNT I**

### **EQUAL CREDIT OPPORTUNITY ACT**

44. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

45. The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, makes it unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race.

46. As described above, Defendants are creditors because they regularly extend, renew, and continue credit, and Plaintiff was an applicant for credit.

47. Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination, refinancing, and underwriting practices and engaged in a pattern or practice of systemic race discrimination against Black and/or African American mortgage loan applicants and borrowers that constitutes illegal intentional race discrimination in violation of the Equal Credit Opportunity Act.

48. Plaintiff was subjected to and harmed by Defendant's systemic and individual discrimination.

49. Defendants' unlawful conduct resulted in considerable harm to Plaintiff.

## **COUNT II**

### **RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981**

50. Plaintiff realleges each and every paragraph above and incorporate them by reference as though fully stated herein.

51. Under 42 U.S.C. § 1981, persons of all races are guaranteed the same right to make and enforce contracts, regardless of race. The term "make and enforce" contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

52. Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination, refinancing, and underwriting practices and engaged in

a pattern or practice of systemic race discrimination against Black and/or African American mortgage loan applicants and borrowers that constitutes illegal intentional race discrimination in the making and modification of contracts in violation of 42 U.S.C. § 1981.

53. Plaintiff was subjected to and harmed by Defendants' systemic and individual discrimination.

### **COUNT III**

#### **RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1982**

54. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

55. Under 42 U.S.C. § 1982, all citizens are guaranteed the same right to inherit, purchase, lease, sell, hold, and convey real and personal property, regardless of race.

56. As set forth above, Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination, refinancing, and underwriting practices and engaged in a pattern or practice of systemic race discrimination against Black and/or African American mortgage loan applicants and borrowers that constitutes illegal intentional race discrimination and disparately impacts Black and/or African American applicants and borrowers in violation of 42 U.S.C. § 1982.

57. Plaintiff was subjected to and harmed by Defendants' systemic and individual discrimination.

#### **COUNT IV**

#### **RACE DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT OF 1968, 42 U.S.C § 3601 *et seq.***

58. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

59. The Fair Housing Act, 42 U.S.C. § 3605(a), prohibits any entity whose business includes engaging in residential real estate-related transactions from discriminating against any person in making available such a transaction on the basis of race.

60. Defendants' business includes engaging in residential real estate-related transactions.

61. As set forth above, Defendants maintained a nationwide set of uniform, discriminatory mortgage servicing practices and engaged in a pattern or practice of systemic race discrimination against Black and/or African American borrowers that constitutes illegal intentional race discrimination and disparately impacts Black and/or African American mortgage borrowers in violation of the Fair Housing Act of 1968.

62. Plaintiff was subjected to and harmed by Defendants' systemic and individual discrimination.

## **COUNT V**

### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

63. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

64. Defendants' actions directed toward Plaintiff were outrageous, beyond the bounds of decency, and odious and intolerable in a civilized community.

65. By their actions directed toward Plaintiff, Defendants knew or should have known that emotional distress was likely to result.

66. By their actions directed toward Plaintiff, Defendants recklessly or deliberately caused Plaintiff to suffer emotional distress.

67. The emotional distress Defendants caused Plaintiff to suffer was severe.

## **COUNT VI**

### **BREACH OF CONTRACT**

68. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

69. Plaintiff and Defendants entered into valid and enforceable oral and written contracts and agreements under which Defendants promised to place

Plaintiff's mortgage into temporary forbearance and to allow Plaintiff to defer making certain payments until after the end of the original loan period.

70. Plaintiff performed under these contracts and agreements.

71. Defendants materially breached these contracts and agreements by treating Plaintiff's deferred payments as delinquent and instituted foreclosure proceedings against her.

72. Plaintiff was damaged by Defendants' breaches.

## **COUNT VII**

### **PROMISSORY ESTOPPEL (Pleaded in the Alternative to Count VI)**

73. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

74. Defendants promised Plaintiff that her mortgage would be put into temporary forbearance whereby she would be allowed to defer making certain payments until after the end of the original loan term.

75. Defendants reasonably expected or should have expected that Plaintiff would act in reliance on their promise by ceasing to make payments during the forbearance period.

76. Plaintiff did in fact act in reliance on Defendants' promise by ceasing to make payments during the forbearance period.

77. Injustice can be avoided only by enforcing Defendants' promise.

## **COUNT IX**

### **FRAUDULENT INDUCEMENT**

78. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

79. Defendants falsely represented to Plaintiff that her mortgage would be put into temporary forbearance whereby she would be allowed to defer making certain payments until after the end of the original loan term.

80. Defendants knew that the foregoing material representation was false and never intended to allow this deferral.

81. Defendants intended that Plaintiff act on its material representation by ceasing to make payments during the forbearance period.

82. Plaintiff ceased making payments during the forbearance period in reliance on Defendants' material representation.

83. Defendants' material representation caused Plaintiff to suffer damages.

## **COUNT X**

### **NEGLIGENT MISREPRESENTATION**

84. Plaintiff realleges each and every paragraph above and incorporates them by reference as though fully stated herein.

85. Defendants falsely represented to Plaintiff that her mortgage would be put into temporary forbearance whereby she would be allowed to defer making certain payments until after the end of the original loan term.

86. Defendants made the foregoing material representation in the course of their business, profession, and employment, and in the course of a transaction in which they had pecuniary interests.

87. Defendants made the foregoing material representation for the guidance of Plaintiff in her mortgage transactions with Defendants.

88. Defendants failed to exercise reasonable care or competence in obtaining the information conveyed in this material representation or in communicating it to Plaintiff.

89. Plaintiff justifiably relied on Defendants' material representation.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court find against Defendants as follows:

- a. Declare that Defendants' acts, conduct, policies and practices are unlawful and violate the Equal Credit Opportunity Act, 42 U.S.C. §§ 1981 and 1982, and the Fair Housing Act; and other state law claims;
- b. Declare that Wells Fargo engaged in a pattern and practice of racial discrimination against Black and/or African American applicants and

borrowers;

- c. Award Plaintiff compensatory and punitive damages;
- d. Award Plaintiff prejudgment interest and attorneys fees, costs and disbursements, as provided by law;
- e. Award Plaintiff such other make whole equitable, injunctive and legal relief as this Court deems just and proper to end the discrimination and fairly compensate Plaintiff.
- f. Award Plaintiff such other relief as this Court deems just and proper.

### **DEMAND FOR A JURY TRIAL**

Plaintiff hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure and Civil Local Rule 3-6.

Respectfully submitted,

BEN CRUMP, PLLC

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*Attorneys for Plaintiff*

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

SHAIA BECKWITH SIMMONS,

Plaintiff,

CASE NO. 4:24-cv-00089-AW-MAF

v.

WELLS FARGO BANK, N.A. and  
WELLS FARGO & CO.,

Defendant.

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**DEFENDANTS' MOTION TO DISMISS OR ALTERNATIVELY TO  
TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

Defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (together, “Defendants”) respectfully move this Court to dismiss or transfer this case to the Northern District of California pursuant to the “first-to-file” rule given that Plaintiff Shaia Beckwith Simmons (“Plaintiff”) has already filed a case in the Northern District of California on this same set of underlying facts and that case remains pending. Alternatively, transfer of this case to the Northern District of California is also warranted pursuant to 28 U.S.C. § 1404(a). Defendants provide the following Memorandum of Law in Support thereof.

## **DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT**

### **I. Introduction**

Plaintiff's Complaint entails factual allegations and claims already the subject of a series of cases pending before the Northern District of California alleging that Wells Fargo discriminates against minority applicants in the residential home lending process. Plaintiff claims she is a well-qualified homeowner that suffered discrimination through Defendants' mortgage lending processes, and that Wells Fargo improperly instituted foreclosure proceedings on her property after offering her a CARES Act deferment which modified her loan. Plaintiff already asserted these allegations twice against the same Defendants in actions pending with the Northern District of California.

Plaintiff first made these assertions in 2022 as a putative class representative. That lawsuit was subsequently consolidated with five other putative class actions that also alleged Defendants engaged in racially discriminatory behavior with respect to their residential mortgage and refinance practices and is pending before the Honorable Judge James Donato in the Northern District of California. The amended consolidated complaint, filed in 2023, identifies Plaintiff as a member of a putative class under Federal Rule of Civil Procedure 23 and asserts specific allegations regarding Plaintiff's same loan and foreclosure as those at issue in this action. Defendants even deposed Plaintiff on February 6, 2024—just before she filed

this action—regarding the allegations she set forth in the amended consolidated complaint in the Northern District of California and how they were illustrative of the class’ experience.

Despite her substantive involvement in the consolidated putative class action, Plaintiff has now filed a duplicative lawsuit in the Northern District of Florida. Allowing Plaintiff to litigate the same case in two parallel jurisdictions would waste judicial resources, be needlessly burdensome to Defendants, and potentially lead to inconsistent results. Consequently, this case should be dismissed or alternatively transferred to the Northern District of California.

## **II. Statement of Facts**

### **A. Plaintiff’s Northern District of Florida Complaint**

Repeating the allegations raised by Plaintiff in the Northern District of California, Plaintiff alleges she was subjected to racial discrimination by Wells Fargo’s mortgage lending processes, and Wells Fargo improperly instituted foreclosure proceedings on her property after offering her a Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”) deferment which modified her loan. ECF No. 1 ¶¶ 33-42. Plaintiff alleges that she was injured as part of Defendants’ nationwide policy of conducting “mortgage origination, approvals, interest rate determinations, fees, costs, refinancing, underwriting, deferment, forbearance, default, loan steering, and foreclosure policies and practices [in a

manner] that intentionally and disproportionately discriminate against and harm Black and/or African American home loan applicants and home mortgage borrowers.” *Id.* ¶ 6. Plaintiff asserts that these policies are part of a “nationwide set of uniform” discriminatory policies enacted by Defendants and implemented across the United States. *See id.* ¶¶ 47, 52, 56, 61. Plaintiff contends that her experience is part of Defendants’ “long history of racial discrimination and . . . corporate culture replete with harmful racial stereotypes and biased views about Black and/or African American customers.” *Id.* ¶ 7.

### **B. Plaintiff’s 2022 Northern District of California Complaint**

As Plaintiff acknowledges in the Complaint, on February 17, 2022, Christopher Williams filed a putative class action complaint in the Northern District of California against Defendants regarding these same allegedly racially discriminatory lending practices. *Id.* ¶ 28. (*Williams v. Wells Fargo, N.A.*, 3:22-cv-00990-JD, ECF No. 1) (“*Williams*”). After *Williams* was filed, five other putative class action lawsuits were filed similarly alleging that Wells Fargo’s mortgage practices were racially discriminatory. *Id.*

On April 14, 2022, Plaintiff was named as a putative class representative in the *Williams* Amended Complaint which included both her “individual and class complaints” against Defendants. *Id.* ¶ 29 (*Williams*, ECF No. 22, attached hereto as

**Exhibit A).**<sup>1</sup> In the *Williams* Amended Complaint, Plaintiff alleged that venue was proper in the Northern District of California because “a substantial part of the events or omissions giving rise to the claim occurred in [that] District, as the discriminatory policies emanated and were executed from Wells Fargo’s headquarters in [that] District.” *Williams*, ECF No. 22, ¶ 2.

Similar to Plaintiff’s allegations here, Plaintiff alleged that she “obtained a home mortgage with Wells Fargo and was subjected to racial discrimination in Wells Fargo’s mortgage lending process.” *Id.* at ¶ 7. She further alleged that “consistent with its nationwide discriminatory practices, Wells Fargo maliciously and unlawfully instituted foreclosure proceedings against [her].” *Id.* at ¶ 40. Based on these allegations, she asserted four claims against Defendants: (1) violation of the Equal Credit Opportunity Act (“ECOA”), (2) violation of 42 U.S.C. § 1981, (3) violation of 42 U.S.C. § 1982, and (4) violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*

In filing the *Williams* Amended Complaint, Plaintiff stated that she was bringing the action “on behalf of [herself] and a class of Black and/or African American applicants or borrowers who applied for, received, or maintained credit from Defendants related to residential real estate and who were subjected to

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<sup>1</sup> The same firm that represented Plaintiff in *Williams*, Ben Crump, PLLC, represents Plaintiff in the filing of this action.

discrimination by Defendants due to their race,” pursuant to Federal Rules of Civil Procedure 23. *Id.* at ¶ 44.

**C. Plaintiff Is a Putative Class Member in the Action Pending Before the Northern District of California**

Thereafter, *Williams* and the five other putative class actions lawsuits were consolidated into one action in the Northern District of California as *In re Wells Fargo Mortgage Discrimination Litigation*; 3:22-cv-00990-JD (“California Litigation”). ECF No. 1 ¶ 29. Following consolidation, an amended and consolidated complaint (“California Consolidated Complaint”) was filed on March 24, 2023. *Id.* (California Consolidated Complaint, CA ECF No. 114, attached hereto as **Exhibit B**).

The California Consolidated Complaint identifies Plaintiff as a member of the putative class under Federal Rule of Civil Procedure 23 and includes allegations that mirror those alleged here. CA ECF No. 114, ¶¶ 140-144. The California Consolidated Complaint describes Ms. Simmons’ experience as being “typical of the class”. *Id.* at Heading I (“Plaintiffs’ Harm is Typical of the Class”); ¶ 139 (“The uniformity of Wells Fargo’s discriminatory practices in connection with its algorithm and otherwise means that Plaintiffs’ experiences are emblematic of the experiences of minority Americans all over the country...”; ¶¶ 140-144 (describing how Simmons’ experience is illustrative of the class’ experience); ¶ 152 (“...Each of these non-white Americans, who are members of the Putative Class, have had experiences

that are typical of the Plaintiffs, regardless of race and ethnicity. Thus, their claims are all substantially similar and congruent, regardless of their individual race or ethnicity, such that the Plaintiffs are qualified to represent their interest as they have claims and interests typical of those putative Class members.”) For example, in the California Consolidated Complaint, Plaintiff alleges that “consistent with its nationwide discriminatory practices,” Defendants “maliciously and unlawfully instituted foreclosure proceedings” against her—the same allegations brought in this case. *Compare Id.* ¶ 143 with ECF No. 1, ¶ 39. In support of the claims alleged, the California Consolidated Complaint states that Plaintiff’s alleged experience is typical of the putative class members. *Id.* at 40. As is the case here, the California Consolidated Complaint asserts claims against Defendants for violation of: (1) the ECOA, (2) 42 U.S.C. § 1981, and (3) the Fair Housing Act, among others. *Compare* CA ECF No. 114, ¶¶ 175-193, with ECF No. 1, ¶¶ 41-62.

Plaintiff is an “illustrative” member of the putative class in the California Litigation. *See* CA ECF No. 114, ¶¶ 139-144, 152. The putative class is defined in the California Consolidated Complaint as encompassing “all Minority Applicants in the United States who, from January 1, 2018 through the present (the “Class Period”), submitted an application for a original purchase or other home mortgage loan or to refinance or modify a home mortgage loan through Defendants that was (i) denied; (ii) approved at higher interest rates or subject to less favorable terms as

compared to similarly situated non-Minority Applicants; or (iii) processed at a rate slower than the average processing time of applications submitted by similarly situated non-Minority Applicants.” *Id.* ¶155. Ben Crump, PLLC, the same firm that brought this action, also represents Plaintiff in the California Litigation and defended Plaintiff in her February 2024 deposition. *Id.* at 55.

Despite this extensive and on-going involvement in litigation in the Northern District of California, Plaintiff brings a duplicative lawsuit here regarding the same loan, arising from the same facts, with claims that overlap with those that are actively being litigated in the California Litigation pending in the Northern District of California. While she claims it is in an abundance of caution due to concerns related to the tolling of her claims [ECF No. 1, Complaint ¶ 29], the California Consolidated Complaint still includes her as a putative and indeed “illustrative” class member.

### **III. Argument**

This Court should dismiss or transfer this case to the Northern District of California pursuant to the “first-to-file” rule. Alternatively, this Court should transfer this case to the Northern District of California pursuant to 28 U.S.C. § 1404(a) because venue there is proper, is in the best interest of justice, and is a more convenient forum.

### **A. This Court Should Dismiss or Transfer Plaintiff’s Complaint Pursuant to the “First-to-File” Rule**

“The ‘first-to-file rule’ developed as a doctrine of federal comity.” *In re Checking Account Overdraft Litigation*, 859 F. Supp. 2d 1313, 1324 (S.D. Fla. 2012). The Eleventh Circuit follows the “first-to-file” rule, and “[w]here two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit.” *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135-36 (11th Cir. 2005). In the Eleventh Circuit, “the party objecting to jurisdiction in the first-filed forum [must] carry the burden of proving ‘compelling circumstances’ to warrant an exception to the first-filed rule.” *Id.* at 1135.

When the rule applies, “the proper course of action [is] for the court to transfer the case to the [first-filed] court to determine which case should, in the interests of sound judicial administration and judicial economy, proceed.” *In re Checking Account Overdraft Litig.*, 859 F. Supp. 2d at 1324 (quoting *Cadle v. Whataburger of Alice, Inc.*, 174 F.3d 599, 606 (5th Cir. 1999)). Importantly, “a transfer of a case under the first-filed rule does not depend on the presence or absence of 28 U.S.C. § 1404(a) considerations.” *Savage v. Seterus, Inc.*, 2020 WL 230982, at \*3 (S.D. Fla. Jan. 15, 2020). However, when a Plaintiff files the same case against the same defendant, the Court may dismiss the case rather than transfer the case pursuant to the “first-to-file” rule. *See Portman v. Wilson*, No. 10-CV-169-KSF, 2010 WL

2870050, at \*5 (E.D. Ky. 2010) (holding that “the interests of justice would be served by dismissing [plaintiff’s claims],” and that “[h]e will suffer no prejudice, because he has already asserted the same claims in” the other pending action).

Application of the “first-to-file” rule requires an evaluation of three factors: chronology of the actions, similarity of the issues, and similarity of the parties. *See McLeod v. Maidenform Brands, Inc.*, 2014 WL 644633, at \*1 (N.D. Fla. Feb. 19, 2014). “Notably, the ‘first-to-file’ rule *doesn’t* require that ‘the parties and issues involved be identical’; it requires only that ‘they are sufficiently similar or substantially overlap.’” *Elliott*, 549 F. Supp. 2d at 1339 (citing *Vital Pharms.*, 2020 WL 6162794, at \*1). This rule is also applicable in the context of multiple class actions complaints. *Davis v. Technology Credit Union, et al.*, 5:22-cv-02206-DAP, ECF No. 16 (S.D. Ohio May 5, 2023) (dismissing claims under “first-to-file rule” where plaintiff brought individual claims against overlapping defendants because earlier-filed putative class action squarely covered the plaintiff’s claims and allegations); *Hilton v. Apple Inc.*, No. C-13-2167 EMC, 2013 WL 5487317, at \*7 (N.D. Cal. Oct. 1, 2013) (stating that courts need not find complete identity between class representatives to apply the “first-to-file rule”; only similarity between the putative classes is required). Because Plaintiff originally brought suit and is now an illustrative putative class member in the California Litigation, which arises from the same facts and circumstances as those alleged here (and in fact asserts the same

factual allegations regarding Plaintiff's loan), dismissal of Plaintiff's Complaint or its transfer to the Northern District of California is warranted.

### **1. Chronology of the Actions Favors Dismissal or Transfer**

The California Litigation precedes Plaintiff's Complaint. Simmons chose to add herself as a named plaintiff in the *Williams* First Amended Complaint on April 14, 2022. The California Consolidated Complaint was filed on March 24, 2023. *See id.* ¶ 28; California Litigation, CA ECF No. 114. Plaintiff's Florida Complaint was filed on February 22, 2024. Using either date, the California Litigation was filed before this action.

### **2. Similarity of Issues Favors Dismissal or Transfer**

Plaintiff's Northern District of Florida Complaint and the allegations in the California Litigation involve almost identical factual issues. Plaintiff's Northern District of Florida Complaint posits that she was subjected to racial discrimination in the mortgage lending processes, and endured improper foreclosure proceedings on her property after being offered a false deferment which modified her loan. ECF No. 1 ¶¶ 33-42. Plaintiff asserts that her experience is emblematic of a "nationwide set of uniform" discriminatory policies enacted by Defendants and implemented across the United States. *See id.* ¶¶ 47, 52, 56, 61. Likewise, the California Litigation targets the same conduct, even referencing Plaintiff's same loan, same efforts to modify her loan, and Defendants' subsequent efforts to foreclose her same property.

See California Litigation, CA ECF No. 114 ¶ 23. In fact, Plaintiff’s Northern District of Florida Complaint acknowledges this overlap directly. ECF No. 1 ¶ 29. Thus, the two actions concern substantially overlapping—if not identical—conduct and factual circumstances.

### 3. Similarity of Parties Favors Dismissal or Transfer

Plaintiff’s Complaint and the California Litigation involve similar parties. When analyzing the “first-to-file” rule in the context of class actions, a court may find that the “first-to-file” rule precludes a later action where the second-filed action’s plaintiff<sup>2</sup> is subsumed into the first-filed action’s putative class. *Davis v. Technology Credit Union, et al.*, 5:22-cv-02206-DAP ECF No. 16 (S.D. Ohio May 5, 2023). The California Litigation, as consolidated, is a putative class action representing a class of minorities allegedly injured by Defendants’ same racially discriminatory lending practices. ECF No. 1 ¶ 28; see California Litigation, CA ECF No. 114. As set forth in the California Consolidated Complaint, Plaintiff contends in specific alleged detail not only that she is a putative class member but she is also

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<sup>2</sup> While Plaintiff’s Complaint states on the caption “Class Action,” her pleading does not qualify as a class action because it does not set out any proposed class definition or facts showing claim may be so maintained. N.D. Fla. Loc. R. 23.1 (“A pleading that asserts a claim on behalf of or against a class must set out the proposed definition of the class and must allege facts showing that the claim or defense may be so maintained.”); *Rivers v. Escambia Cnty. Jail*, 2005 WL 2176863, at \*2 (N.D. Fla. Sept. 6, 2005) (“Although plaintiff states his desire to maintain this lawsuit as a class action, the allegations of his complaint fail to address the prerequisites for certification as a class action.”) (citing Fed. R. Civ. P. 23 and N.D. Fla. Loc. R. 23.1).

illustrative of the class’ experience. *Id.* Additionally, both pleadings target conduct by Wells Fargo Bank N.A and Wells Fargo & Co. Therefore, there is substantial similarity between the parties in both litigation tracks.

Because all factors favor application of the “first-to-file” rule, transfer to the first-filed action in the Northern District of California or dismissal of Plaintiff’s Complaint is warranted.

#### **4. No Compelling Circumstances Warrant Exception to the “First-to-File Rule” in this Matter**

Where the “first-to-file” rule applies, dismissal is proper unless the plaintiff can demonstrate an exception such as compelling circumstances. The party objecting to exclusive jurisdiction in the first-filed forum has the burden of proving “compelling circumstances” to warrant an exception to the first-filed rule. *Rojas v. American Honda Motor Co.*, 2019 WL 6342616, at \*2 (S.D. Fla. Nov. 26, 2019); *Chapman v. Progressive Am. Ins. Co.*, 2017 WL 3124186, at \*1 (N.D. Fla. July 24, 2017). Plaintiff cannot prove any compelling circumstances that warrant avoidance of the “first-to-file” rule. Thus, the “first-to-file” rule compels dismissal or transfer of Plaintiff’s Complaint to the Northern District of California.

#### **B. Alternatively, Transfer of Plaintiff’s Complaint to the Northern District of California is Warranted Under 28 U.S.C. § 1404(a)**

“The Court need not address Defendant’s argument for transfer pursuant to 28 U.S.C. § 1404 because application of the ‘first-to-file’ rule is dispositive.” *Laskaris*

*v. Fifth Third Bank*, No. 13-20529-CIV-KING, 2013 WL 4496549, at \*2 (S.D. Fla. May 14, 2013). Nevertheless, to the extent the case is not dismissed or transferred pursuant to the “first-to-file” rule, in the interests of expediency, convenience, and fairness, the Court should also transfer the case to the Northern District of California pursuant to 28 U.S.C. § 1404(a).

A federal court may, “in the interest of justice” and “[f]or the convenience of the parties and witnesses” “transfer any civil action to another district or division where it might have been brought.” 28 U.S.C. § 1404(a). The decision of whether to transfer a case under § 1404(a) requires a two-step analysis. First, the Court must determine whether the action may have been brought originally in the proposed transferee court. *Potter v. Ashford University*, 2020 WL 3420826, at \*2 (N.D. Fla. Apr. 22, 2020) (citing § 1404(a)). Second, if the answer to the first step is yes, then the Court must determine whether a transfer is justified based on “(1) the convenience of the parties; (2) the convenience of witnesses; and (3) the interests of justice.” *Harvard v. Inch*, 408 F. Supp. 3d 1255, 1260 (N.D. Fla. 2019); *Potter*, 2020 WL 3420826, at \*2. The party seeking the transfer has the burden to show that a transfer is warranted. *Id.* Accordingly, “[t]he burden is on the movant to establish that the suggested forum is more convenient.” *In re Ricoh*, 870 F.2d 570, 573 (11th Cir. 1989). Ultimately, the “decision to transfer a case to another district is left to the sound discretion of the trial court.” *Brown v. Conn. Gen. Life Ins. Co.*, 934 F.2d

1193, 1197 (11th Cir. 1991). As discussed in further detail below, this Court should exercise its discretion to transfer this case pursuant to § 1404(a) in the interest of justice and based on convenience.

### **1. Plaintiff's Action Could Have Originally Been Brought in the Northern District of California**

First, “the movant must establish that the plaintiff could have brought the action in the proposed transferee district.” *Harvard*, 408 F. Supp. 3d at 1260 (citing § 1404(a)). To do this, “the moving party must demonstrate that venue, personal jurisdiction, and subject matter jurisdiction would have been proper in the proposed transferee district.” *Baker v. Major League Baseball Props., Inc.*, No. 3:08cv114/MCR, 2009 WL 1098482, at \*2 (N.D. Fla. Apr. 22, 2019). Defendants satisfy their burden to show that all three of these requirements are met.

Plaintiff already filed suit in the proposed transferee district. When Plaintiff added herself as a named plaintiff in the *Williams* First Amended Complaint and alleged the same facts alleged here, Plaintiff contended venue was appropriate in the Northern District of California “because both Defendants reside in this District and a substantial part of the events or omission giving rise to the claim occurred in this District, as the discriminatory policies emanated and were executed from Wells Fargo’s headquarters in this District.”<sup>3</sup> Similarly, the California Consolidated

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<sup>3</sup> *Williams*, ECF No. 22, ¶ 2.

Complaint which names Plaintiff and includes the same facts that Plaintiff relies on in this action also concedes that the Northern District of California is the proper jurisdiction and venue.<sup>4</sup>

Even without Plaintiff's admissions, venue, personal jurisdiction, and subject matter jurisdiction are proper in the Northern District of California. Venue is proper in a judicial district where (1) any defendant resides, if all defendants are residents of the state in which the district is located, or (2) a substantial part of the events or omissions giving rise to the claim occurred. *See* 28 U.S.C. § 1391(b). Here, Defendants both reside within the jurisdiction of the Northern District of California. A federal court in the Northern District of California would have subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1332(d). *Id.* ¶ 1. Plaintiff's allegations also make clear that more than a substantial part of the events giving rise to the Complaint occurred in the Northern District of California. Plaintiff alleges that Defendants engaged in a systematic, widespread, and coordinated pattern of lending discrimination across the United States that originated from the corporate headquarters in California. ECF No. 1 ¶ 6. Plaintiff alleges that her experiences were not unique to herself or even Florida but rather were "consistent with its nationwide discriminatory practices and treatment" of all similarly situated borrowers. *Id.* ¶ 39. Thus, Plaintiff's own allegations concern discrimination at the hands of general

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<sup>4</sup> California Litigation, ECF No. 114, ¶¶ 24-26.

corporate representatives, directly implicating the policies, procedures, and actions originating in the Northern District of California. Consequently, consistent with Plaintiff's own allegations before another federal court, the claims here could have been brought (and were already brought) in the Northern District of California.

## **2. Transfer to the Northern District of California is Warranted in the Interests of Justice**

In evaluating whether to transfer a case pursuant to § 1404(a), the Eleventh Circuit provides a list of at least nine factors for district courts to evaluate. These factors include:

(1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

*Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 n.1 (11th Cir. 2005). "In determining whether to transfer a case, there is no single dispositive factor." *Brandywine Commc'ns Tech., LLC v. Cisco Sys., Inc.*, No. 6:11-CV-1843-ORL-36DAB, 2012 WL 8281188, at \*2 (M.D. Fla. Mar. 26, 2012) (citing *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1137 (11th Cir. 2005)). Moreover, each factor will not necessarily be relevant in every case. *See, e.g., Florida v. Jackson*, No.

3:10-CV-503-RV-MD, 2011 WL 679556, at \*2 (N.D. Fla. Feb. 15, 2011). As discussed below, the relevant<sup>5</sup> factors overwhelmingly favor transfer to the Northern District of California.

### **1. Trial Efficiency and the Interests of Justice, Based on the Totality of the Circumstances**

Based on the totality of circumstances, transfer to the Northern District of California serves the ultimate purpose of § 1404(a). Because the “interest of justice” factor is a distinct component of the § 1404(a) analysis, it “may be determinative in a particular case, even if the convenience of the parties and witnesses might call for a different result.” *Id.* (citing *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 220 (7th Cir. 1986)). Notably, “[t]he interest of justice may be served by transferring a case to facilitate its consolidation with other cases arising from the same conduct.” *Lincoln National Life Ins. v. Aon Re*, 2004 WL 115211 at \*1 (D. Conn. Jan. 21, 2004) (citing *Wyndham Associates v. Bintliff*, 398 F.2d 614, 619 (2d Cir.1968)); *Central Money Mortg. Co., Inc. v. Holman*, 122 F. Supp. 2d 1345, 1347 (M.D. Fla. 2000) (granting transfer because the interests of justice would be best served by enabling consolidation of multiple cases pending between parties).

The California Litigation, pending in the Northern District of California, concerns the same facts and claims as those alleged here. *See Fairfax Dental*

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<sup>5</sup> Because they are not relevant to the Court’s analysis, Defendants do not discuss factors two, three and seven.

*(Ireland) Ltd. v. S.J. Filhol Ltd.*, 645 F. Supp. 89, 92 (E.D.N.Y. 1986) (“[T]he pendency of a related case in the proposed transferee forum is a powerful reason to grant a motion for a change of venue.”).

If transferred, the Honorable Judge James Donato, currently overseeing the California Litigation, can order the consolidation of Plaintiff’s case with the California Litigation. *See, e.g., Talent Tree Crystal, Inc. v. DRG, Inc.*, No. 1:04-CV-875, 2005 WL 3312554, at \*5 (W.D. Mich. Dec. 7, 2005) (“A transfer will promote judicial economy by obviating the need to pursue two actions involving the same [subject] in distant forums. In the event the two cases are consolidated, it would allow a single court to provide a final adjudication of the parties’ ... dispute. Even if the cases are not consolidated, judicial economy is served by placing related claims before the same court.”). Thus, transfer will assist the necessary and proper consolidation of complex and related cases before a single federal judge, and ultimately save countless judicial resources, litigant expenses, attorneys’ fees, and time. *See Hawkins v. Gerber Products Co.*, 924 F. Supp. 2d 1208, 1214 (S.D. Cal. 2013) (granting transfer to a district where “five similar cases against Defendants have already been consolidated and are currently pending” because transfer “would serve the interest of justice due to the possible consolidation of discovery and the conservation of time, energy and money, and the avoidance of the possibility of inconsistent judgments”). Thus, this factor supports transfer.

## 2. Locus of Operative Facts

“In determining the locus of operative facts, the court must look at the site of events from which the claim arises.” *Trans Am Worldwide, LLC v. JP Superior Solutions, LLC*, 2018 WL 3090394, at \*9 (N.D. Fla. Apr. 30, 2018) (citation omitted).

Plaintiff does not allege that her experience was an isolated incident involving a specific employee or branch in Florida. Rather, Plaintiff alleges her experience was the result of a comprehensive policy decision by Defendants’ corporate entity to discriminate against Black and African American borrowers nationwide. *See* ECF No. 1 ¶¶ 6-9, 47, 52, 56, 61; *Jones v. Walgreen Co.*, 463 F. Supp. 2d 267, 277-78 (D. Conn 2006) (upholding transfer to district of defendant’s corporate headquarters where plaintiff alleged pervasive corporate policy of discrimination even where plaintiff was discriminated against in a different district). Further, Plaintiff has failed to allege *any* relevant events that occurred in this District. *See Bennett Eng’g Grp., Inc. v. Ashe Indus., Inc.*, No. 6:10-CV-1697-ORL-28, 2011 WL 836988, at \*2 (M.D. Fla. Mar. 8, 2011) (“In deciding the proper venue, ‘only the events that directly give rise to a claim are relevant.’” (quoting *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371 (11th Cir. 2003))). Plaintiff does not allege that she interacted with any employees or branches in Florida in connection with her claims. Thus, this factor supports transferring Plaintiff’s case.

### **3. Convenience of the Witnesses**

The convenience of the witnesses also favors transfer. Other than Plaintiff herself, the Complaint does not identify any witnesses that live, reside, or operate out of Florida. Plaintiff does not identify a branch she communicated with in Florida, any specific employees that discriminated against her, or any individuals with authority or knowledge of the alleged facts that live in Florida.

### **4. Availability of Process to Compel the Attendance of Unwilling Witnesses**

The availability of process to compel the attendance of unwilling witnesses is a neutral factor here. Federal Rule of Civil Procedure 45(c) governs a court's ability to compel witnesses to appear. Witnesses can be compelled to appear within (1) one hundred miles of where that person works or lives or (2) within the state where that person works or lives if the person is a party or would not incur substantial expense. Fed. R. Civ. P. 45(c)(1). As explained above, Plaintiff does not point to any events occurring in Florida specifically and Wells Fargo has operations throughout the country.

### **5. Relative Means of the Parties**

This factor still does not heavily support retention of this case in Florida. Courts may consider the relative means—including financial means—of the parties in ruling to retain or transfer a case. *Combs*, 461 F. Supp. 3d at 1215. This factor is important to the decision to transfer to the extent transfer would “dramatically

increase the costs associated with” the litigation, *Jones*, 463 F. Supp. 2d at 278, and will support retention only where the non-movant provides specific evidence of undue burden. *Wechsler v. Macke Int’l Trade, Inc.*, 1999 WL 1261251, at \*8 (S.D.N.Y. Dec. 27, 1999) (“[P]laintiff’s unsupported assertion that plaintiff’s means are ‘extremely limited’ does not suffice to show that transfer would be unduly burdensome.”).

Here, Plaintiff’s allegations do not indicate that financial means warrants retention of the case. Plaintiff does not—and cannot—identify any costs that will dramatically increase if transfer is granted. Nor can Plaintiff provide any specific evidence that her burden in litigating this action in California will be undue compared to litigation in Florida. To the contrary, if this case is transferred to California, it will likely be consolidated with the California Litigation, augmenting Plaintiff’s aggregate resources in litigating her case and diffusing the burdens of discovery among other parties. Thus, this factor supports transfer.

## **6. The Weight Accorded a Plaintiff’s Choice of Forum**

Under these particular facts, Plaintiff’s choice of forum merits little weight and does not overcome the overwhelming reasons to transfer this case. Ordinarily, a plaintiff’s choice of forum is given considerable deference. *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996) (a plaintiffs’ choice of forum should not be disturbed unless it is “clearly outweighed by other considerations”). However,

“where the operative facts underlying the cause of action did not occur within the forum chosen by the Plaintiff, the choice of forum is entitled to less consideration.” *Jackson*, 2011 WL 679556, at \*3; *Martinez v. Shulkin*, 2017 WL 10821303, at \*1 (N.D. Fla. Aug. 2, 2017) (granting transfer where plaintiff’s chosen forum had almost nothing to do with overall allegations).

As discussed above, Plaintiff’s Complaint does not contend that Defendants allegedly discriminatory home lending policies and practices derived from or were specific to Florida. Instead, Plaintiff’s residence is the only discernible connection to the state of Florida. This fact alone, however, is insufficient to keep this case in Florida. *See e.g., AGSouth Genetics LLC v. Terrell Peanut Co.*, No. 3:09-cv-93 (CDL), 2009 WL 4893588, at \*2 (M.D. Ga. Dec. 9, 2009) (granting motion to transfer when, *inter alia*, the plaintiff’s residence in the chosen forum was the only real connection between the case and that forum). Especially in light of the Plaintiff’s alleged status as a putative class member in the California Litigation. Therefore, this factor, at a minimum, does not support retention of this case in Plaintiff’s original<sup>6</sup> choice of forum.

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<sup>6</sup> To the extent relevant, Plaintiff’s coordination with consolidated class counsel in the California Litigation and self-identification as a member of the putative class indicates that her *actual* original choice of forum is indeed the Northern District of California and not Florida.

### **Conclusion**

For the reasons set forth above, this matter must be dismissed or transferred to the Northern District of California pursuant to the “first-to-file” rule. Alternatively, in the interest of expediency, convenience, and fairness, this case should be transferred to the Northern District of California pursuant to 28 U.S.C. § 1404(a) to be heard alongside the California Litigation. Indeed, the California Consolidated Complaint includes Plaintiff by name, and the facts she alleges there are the same facts that she alleges here. And Plaintiff concedes that she is a putative class member in the California Litigation. Accordingly, Defendants respectfully request dismissal or transfer of Plaintiff’s Complaint.

Alternatively, to the extent this Court does not otherwise dismiss and/or transfer this matter, the case should not be permitted to proceed as a class action. Indeed, while Plaintiff references that this is a “Class Action” in the title of her Complaint, the Complaint otherwise has none of the hallmarks of a putative class action claim. Pursuant to Local Rule 23.1, “[a] pleading that asserts a claim on behalf of or against a class must set out the proposed definition of the class and must allege facts showing that the claim or defense may be so maintained.” Plaintiff fails

to satisfy even these most basic requirements, and any assertion that this case may proceed as a putative class should be stricken.

WHEREFORE, Defendants request that this Court dismiss this case, or alternatively transfer the matter to the Northern District of California. Defendants further request that the references to a class be stricken, and that this Court grant such other and further relief as this Court deems just and proper.

**Certificate of Compliance with Local Rule 7.1(F)**

Counsel for Defendants hereby certifies that this Motion contains 5,605 words as calculated by Microsoft Word, excluding the case style, signature block, and certificate of service.

This the 8th day of March, 2024.

**MCGUIREWOODS LLP**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 8, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

/s/ Emily Y. Rottmann

Attorney

**DEFENDANTS' MOTION TO DISMISS OR ALTERNATIVELY  
TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

**EXHIBIT A**

***Williams, et al. v. Wells Fargo, N.A., et al.***  
**Case No. 3:22-cv-00990-JD**

**ECF No. 1 – *Williams* Amended Complaint**

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INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CHRISTOPHER WILLIAMS, SAM ALBURY,  
and SHAIA BECKWITH SIMMONS, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A. and WELLS  
FARGO & CO.,

Defendant.

CASE NO: 3:22-cv-00990-JD

**AMENDED COMPLAINT**

Class Action

Jury Trial Demanded

Hon. James Donato

AMENDED  
COMPLAINT

**AMENDED COMPLAINT**  
**CLASS ACTION**

Plaintiffs Christopher Williams (“Williams”), Sam Albury (“Albury”), and Shaia Beckwith Simmons (“Simmons”), on behalf of themselves and all others similarly situated, by and through their attorneys, hereby file this Amended Complaint against Defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (collectively “Wells Fargo” or the “Firm”), and state as follows:

**JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343. In addition, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d), as the amount in controversy exceeds \$5,000,000, and at least one member of the class is a citizen of a different state than any defendant. Plaintiff Williams is a citizen of Georgia, Plaintiff Albury is a citizen of Nevada, Plaintiff Simmons is a citizen of Florida, and neither Defendant is a citizen of Georgia, Nevada, or Florida. Defendant Wells Fargo & Co. is incorporated in Delaware and its principal place of business is in San Francisco, California, as set forth further below. Defendant Wells Fargo Bank, N.A. is a national banking association chartered in South Dakota and with its principal place of business in San Francisco, California.

2. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) because both Defendants reside in this District and a substantial part of the events or omissions giving rise to the claim occurred in this District, as the discriminatory policies emanated and were executed from Wells Fargo’s headquarters in this District. Venue is proper in the San Francisco Division of the Northern District of California because a substantial part of the events or omissions giving rise to the claims occurred in the county of San Francisco.

## PARTIES

3. Defendant Wells Fargo & Co. is a publicly-traded, global financial services firm and Fortune 500 corporation incorporated in Delaware and has its principal place of business in San Francisco, California. As of December 31, 2020, Wells Fargo has assets of approximately \$1.9 trillion, loans of \$887.6 billion, deposits of \$1.4 trillion and stockholders' equity of \$185 billion.<sup>1</sup> Wells Fargo provides a wide variety of financial products and services to its global and domestic clients, who include corporations, governments, financial institutions and individuals, including home mortgages. Wells Fargo claims to serve at least one out of three households in the United States.<sup>2</sup>

4. Defendant Wells Fargo Bank, N.A. is a national banking association chartered in South Dakota with its principal place of business in San Francisco, California, and a subsidiary of Wells Fargo & Co.

5. Plaintiff Christopher Williams is African American and a citizen of Georgia. As described below, Williams applied for a home mortgage with Wells Fargo and was subjected to racial discrimination in Wells Fargo's mortgage lending process.

6. Plaintiff Sam Albury is African American and a citizen of Nevada. As described below, Albury applied for a home mortgage with Wells Fargo and was subjected to racial discrimination in Wells Fargo's mortgage lending process.

7. Plaintiff Shaia Beckwith Simmons is African American and a citizen of Florida. As described below, Plaintiff Simmons obtained a home mortgage with Wells Fargo and was subjected to racial discrimination in Wells Fargo's mortgage lending process.

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<sup>1</sup> <https://www.wellsfargo.com/assets/pdf/about/investor-relations/sec-filings/2020/10k.pdf>

<sup>2</sup> [https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20\(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage](https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-launches-Banking-Inclusion-Initiative-to-accelerate-unbanked-households-access-to-affordable-transactional-accounts/default.aspx#:~:text=Wells%20Fargo%20%26%20Company%20(NYSE%3A,of%20banking%2C%20investment%20and%20mortgage)

## **FACTUAL ALLEGATIONS**

8. As stated above, Wells Fargo is one of the largest banks in the country and one of the top residential mortgage providers in the United States. Across the country, Wells Fargo applies mortgage origination, approvals, interest rate determinations, fees, costs, refinancing, underwriting, deferment, forbearance, default, and foreclosure policies and practices that intentionally and disproportionately discriminate against and harm Black and/or African American home loan applicants and home mortgage borrowers. Williams, Albury, and Simmons were injured by Wells Fargo's racially discriminatory residential mortgage policies and practices.

9. Wells Fargo has a long history of racial discrimination and maintains a corporate culture replete with harmful racial stereotypes and biased views about Black and/or African American customers.

10. Wells Fargo discriminates against Black and/or African American customers throughout its lending process, from application—where Wells Fargo disproportionately denies credit to Black and/or African American applicants—to origination—where Wells Fargo disproportionately charges higher interest rates, imposes higher fees and costs, and offers worse terms to Black and/or African Americans compared to non-Black, non-African Americans—to refinancing—where Wells Fargo disproportionately denies Black and/or African Americans the opportunity to modify or lower their interest rates—and servicing—where Black and/or African American borrowers are subjected to additional racial discrimination.

11. Wells Fargo engages in redlining by approving white applicants for mortgage loans at substantially higher rates than Black and/or African American applicants. In 2020, for instance, according to an analysis of nationwide data published under the Home Mortgage Disclosure Act, Wells Fargo approved approximately 67.1% of white borrowers who applied for a mortgage, compared to only 51.8% of Black and/or African American applicants.

1           12. When evaluating statistical disparities like the one described above, statisticians  
2 use a tool called the “standard deviation” to assess the likelihood that the disparity is due to  
3 chance. The more standard deviations, the more the observed result deviates from the expected  
4 result and the less likely that the disparity is due to random chance. Courts and statisticians  
5 consider a disparity “statistically significant”—that there is a 95% level of confidence that  
6 random chance did not cause the disparity—at 1.96 standard deviations. In this case, the  
7 difference in approvals is statistically significant at *over 29 standard deviations*.

9           13. When Wells Fargo approves Black and/or African American borrowers’ mortgage  
10 applications, it does so on substantially worse terms than offered to non-Black, non-African  
11 American borrowers. Nationwide, in 2020, the average interest rate Wells Fargo charged to Black  
12 and/or African American borrowers was 3.34%, versus 3.23% to white borrowers. The difference  
13 is statistically significant at over 17 standard deviations.

15           14. Wells Fargo also imposes higher costs on Black and/or African American  
16 borrowers relative to the size of their loans. In 2020, Black and/or African American borrowers  
17 nationwide had to spend, on average, 2.0% of their Wells Fargo loan value on costs and fees,  
18 versus 1.7% for white borrowers. The disparity is statistically significant at 9 standard deviations.

19           15. Wells Fargo has faced a number of recent lawsuits and settlements challenging  
20 these practices and disparities. For example, in 2011, a jury found Wells Fargo guilty of  
21 systematically discriminating against minority home buyers by using a computer software for  
22 minority homeowners which resulted in them paying more for their home loans than white  
23 borrowers. *Opal Jones, et. al v. Wells Fargo Bank, N.A., et al.*, Case No. BC337821 (Los Angeles  
24 Superior Court) (\$3.5 million verdict). Wells Fargo has also paid hundreds of millions of dollars  
25 to avoid litigating its discriminatory home lending practices. Indeed, Wells Fargo agreed to a  
26 settlement valued at over \$440 million of a lawsuit challenging the Firm’s redlining practices,  
27  
28

1 resulting in a disproportionate number of foreclosures in African American neighborhoods in  
2 Shelby County and the City of Memphis. *City of Memphis and Shelby County, et al. v. Wells*  
3 *Fargo Bank, N.A., et al.*, Case No. 2:09-CV-02857 (W.D. Tenn.). Wells Fargo also settled a  
4 lawsuit for \$37 million led by the National Fair Housing Alliance alleging that Wells Fargo took  
5 better care of foreclosed properties that it owned in white neighborhoods than those in African  
6 American and Latino communities. *National Fair Housing Alliance, et al. v. Wells Fargo Bank*  
7 *N.A., et al.*, HUD Case No. 09-12-0708-8 (U.S. Department of Housing & Urban Development  
8 Office of Fair Housing & Equal Opportunity).

10 16. Wells Fargo has also faced and settled numerous lawsuits challenging its “reverse  
11 redlining” practices of charging higher rates and imposing less favorable terms for minority home  
12 borrowers than for white home borrowers. For instance, in 2013, Wells Fargo paid \$175 million  
13 to settle a lawsuit brought by the United States Department of Justice alleging that the Firm  
14 charged higher rates to its African American and Latino borrowers. *United States v. Wells Fargo*  
15 *Bank, NA*, Case No. 1:12-cv-01150 (D.D.C.).

17 17. In 2019, Wells Fargo paid \$10 million to settle a similar claim brought by the City  
18 of Philadelphia. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-02203-AB (E.D.  
19 Pa. 2019). Philadelphia alleged that Wells Fargo simply swapped the evil of redlining—refusing  
20 to lend to minority communities—for the similarly pernicious reverse redlining—lending to  
21 minority borrowers, but saddling them with more expensive loans with worse terms than those  
22 extended to white borrowers. *City of Philadelphia v. Wells Fargo & Co., et al.*, No. 2:17-cv-  
23 02203-AB (E.D. Pa. 2019), Dkt. 1 (Complaint) ¶¶ 5–21. Philadelphia alleged that “since at least  
24 2004 . . . Wells Fargo has systematically engaged in a continuous and unbroken discriminatory  
25 pattern and practice of issuing higher cost or more onerous mortgage loans to minority borrowers  
26 in Philadelphia when more favorable and less expensive loans were being offered to similarly  
27  
28

1 situated non-minority borrowers.” *Id.* ¶ 5 (E.D. Pa.). Philadelphia’s statistical analysis revealed  
 2 that African American borrowers were more than twice as likely to “receive a high-cost or high-  
 3 risk loan” than a white borrower even when controlling for credit score. *Id.* ¶ 14. Indeed, the  
 4 discrimination worsened as the credit score increased—especially creditworthy “African-  
 5 Americans with FICO scores over 660 were 2.570 times more likely to receive a high-cost or  
 6 high-risk loan from Wells Fargo as a white borrower.” *Id.* The predictable result of Wells Fargo’s  
 7 foisting high-cost, high-risk loans on African Americans was an explosion of foreclosures in  
 8 minority communities, where loans were “4.710 times more likely to result in foreclosure than is  
 9 a loan in a predominantly white neighborhood.” *Id.* ¶ 12. This precipitated what “many leading  
 10 commentators describe[d] as the ‘greatest loss of wealth for people of color in modern US  
 11 history.’” *Id.* ¶ 18.

12  
 13  
 14 18. Wells Fargo has found new avenues to discriminate against Black and/or African  
 15 American customers with recent changes to the home mortgage market. Nationwide, homeowners  
 16 have had the opportunity to take advantage of historically low interest rates through refinancing,  
 17 which occurs when a homeowner applies for credit related to their residential real estate to change  
 18 the terms of an earlier loan. Over the last two years, U.S. homeowners refinanced almost \$5  
 19 trillion in mortgages, generating untold savings.<sup>3</sup> This could have been an opportunity for African  
 20 American homeowners to build wealth and secure their families’ futures.

21  
 22 19. Wells Fargo, however, systematically and intentionally shut Black and/or African  
 23 American customers out of this major wealth event. According to an analysis of 2020 Home  
 24 Mortgage Disclosure Act data, Wells Fargo approved 33.7% of refinancing applications from  
 25 Black and/or African American applicants, compared with 49.1% from white applicants. Wells  
 26  
 27

28 <sup>3</sup> <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/>

1 Fargo denied Black and/or African Americans borrowers' applications outright 36.1% of the  
 2 time, versus 20.3% of the time for white borrowers. These disparities are statistically significant  
 3 at over 31 standard deviations.

4 20. And just as it does with home purchase loans, Wells Fargo charges higher costs  
 5 and interest rates to Black and/or African American customers who obtain refinancing. In 2020,  
 6 Wells Fargo charged the average national Black and/or African American refinancing recipient  
 7 3.18% versus 3.11% for white refinancing recipients, and charged Black and/or African American  
 8 customers an average of \$5,335 in costs and fees versus \$4,193 for white borrowers, for an  
 9 average cost of borrowing of 2.6% for Black and/or African American customers versus 1.8% for  
 10 white borrowers. All these disparities are statistically significant.

11 21. Wells Fargo's failure to extend refinancing and other home loans to Black and/or  
 12 African American customers has even drawn the attention of members of Congress. Senators  
 13 Elizabeth Warren and Ron Wyden recently wrote a letter to Wells Fargo's Chief Executive  
 14 Officer Charles Scharf excoriating the Bank for its "shocking disparity" in its approval ratings of  
 15 Black and/or African American refinancing applicants.<sup>4</sup> The Senators stated that Wells Fargo's  
 16 recent actions were consistent with "Wells Fargo's long history of scamming and mistreating  
 17 consumers of color."<sup>5</sup> Furthermore, the Senators believed "Wells Fargo's treatment of Black  
 18 borrowers is deeply concerning, no matter how one looks at the data" and concluded, "Wells  
 19 Fargo appears to be simply unable or unwilling to stop preying upon customers of color."<sup>6</sup>

20 22. Wells Fargo discriminates against its African American employees just as readily  
 21 as it does its customers. In 2016, Wells Fargo was charged with systemic discrimination against  
 22

23  
 24  
 25  
 26 <sup>4</sup>Letter from Senators Elizabeth Warren and Ron Wyden, March 16, 2022  
 27 <https://www.warren.senate.gov/imo/media/doc/2022.3.16%20Letter%20to%20Wells%20Fargo%20on%20Refinancing%20Discrimination.pdf>

28 <sup>5</sup> *Id.*

<sup>6</sup> *Id.*

1 minority Financial Advisors including by African American Financial Advisors in the class action  
2 lawsuit *Slaughter v. Wells Fargo Advisors*, 14-cv-06368 (N.D Ill. 2014). Wells Fargo eventually  
3 settled the *Slaughter* litigation for over \$35 million. *Slaughter v. Wells Fargo Advisors*, 14-cv-  
4 06368 (N.D Ill. 2014), Dkt. 99-1.

5  
6 23. In determining home loans, interest rates, points, and other credit and contractual  
7 terms, Wells Fargo intentionally uses factors to determine eligibility for home loan rates, terms,  
8 and conditions that facilitate redlining and reverse redlining against and disfavor Black and/or  
9 African American applicants.

10 24. Many traditional techniques for determining creditworthiness, such as FICO score,  
11 debt-to-income ratio, and work history, have been demonstrated to cause an unlawful disparate  
12 impact against Black borrowers and/or African Americans. Wells Fargo, however, employs an  
13 even more discriminatory “unique scoring model” that eschews even these traditionally  
14 discriminatory origination and underwriting techniques. Wells Fargo thereby intentionally  
15 discriminates and creates an unlawful disparate impact against Black and/or African American  
16 mortgage applicants, including applicants for refinancing.

17  
18 25. Additionally, pursuant to its Firm-wide discriminatory culture, Wells Fargo unduly  
19 scrutinizes and is unduly skeptical of the application materials submitted by Black and/or African  
20 American applicants, causing undue delays and rejections of Black and/or African American  
21 mortgage applicants, including applicants for refinancing.

22  
23 26. In the rare case Wells Fargo offers mortgage loans to Black and/or African  
24 American customers on reasonable terms, Wells Fargo engages in predatory lending practices to  
25 force Black and/or African American borrowers out of those terms, including pressuring Black  
26 and/or African American borrowers to increase their rates by improperly treating Black and/or  
27 African American borrowers’ loans in default and instituting improper foreclosures.  
28

1           27.     The racially discriminatory policies and practices at Wells Fargo are uniform and  
2 national in scope and create an artificial, arbitrary, and unnecessary barrier to fair housing  
3 opportunities for Black and/or African American borrowers. Class members who applied for  
4 loans at Wells Fargo offices across the country and were harmed by these same policies and  
5 practices are relying on Plaintiffs and this lawsuit to protect their rights. Wells Fargo's policies  
6 are practices are implemented with discriminatory intent and/or disproportionately impact Black  
7 and/or African Americans borrowers.

9                           **PLAINTIFFS WERE INJURED BY DEFENDANTS'**  
10                           **DISCRIMINATORY POLICIES AND PRACTICES**

11           **Christopher Williams**

12           28.     Williams is African American. Williams was a well-qualified African American  
13 home borrower. When he applied for his mortgage loan, Williams was highly creditworthy, as  
14 reflected in his high FICO score of over 750. Based on this, Williams believed he should have  
15 qualified for Wells Fargo's prime interest rate, which would have saved him substantial money  
16 over time on his home mortgage. However, consistent with Wells Fargo's pattern of  
17 discrimination against African American borrowers, Wells Fargo offered Williams an interest rate  
18 nearly three points higher than the prime interest rate offered by Wells Fargo, which is  
19 disproportionately and discriminatorily offered to white applicants.

21           29.     Believing it to be a mistake, Williams spoke to Wells Fargo's home lending  
22 department to have his credit report rechecked and for his interest rate to be lowered. Instead, the  
23 Firm refused to reconsider his credit score or his interest rate.

24           30.     Wells Fargo agreed to revisit its refusal to extend the loan to Williams on  
25 favorable terms. However, in a letter dated September 5, 2019, Wells Fargo finally articulated for  
26 the first time, that it did not use solely FICO credit scores to determine home interest rates, but  
27

1 instead used “a unique scoring model, which considers more than credit scores to evaluate  
2 applications.”

3 31. Indeed, the “other” factors used by Wells Fargo to determine interest rates for  
4 home loans serve to intentionally exclude Black and/or African American borrowers from  
5 affordable and lower-risk loans, force Black and/or African American borrowers to pay higher  
6 interest rates and other fees that similarly situated white borrowers, and have a disparate impact  
7 based on race. Williams applied for and received a home loan from another bank at its prime  
8 interest rate.

10 32. Williams identified his race to Wells Fargo during the application process.

11 **Sam Albury**

12 33. Plaintiff Albury is African American. Albury is a well-qualified African American  
13 home borrower. When he applied for his mortgage, Albury was gainfully employed, had already  
14 owned two properties, and was highly creditworthy. In or around June 2020, Albury agreed to  
15 purchase a new home in Las Vegas, Nevada. To do so, Albury agreed to close on the property in  
16 35 days and paid the buyer a considerable amount of earnest money. Despite being warned not to  
17 use Wells Fargo by his realtor, Albury believed he would receive a prime mortgage due to his  
18 preexisting banking relationship with Wells Fargo.

20 34. However, consistent with Wells Fargo’s pattern of discrimination against Black  
21 and/or African American borrowers across the country, Wells Fargo offered Albury an interest  
22 rate higher than the prime interest rate offered by Wells Fargo to white applicants. Wells Fargo  
23 also unduly scrutinized his application and subjected him to baseless inquiries regarding his  
24 finances and work history. Worried that Wells Fargo would not approve his mortgage application  
25 in time for the scheduled closing, Albury answered all of Wells Fargo’s baseless inquiries.  
26  
27  
28

1           35. Wells Fargo continued to string Albury along until, just days before his scheduled  
2 closing, Wells Fargo denied his application in full. Wells Fargo's actions forced Albury to walk  
3 away from his home purchase, thereby forfeiting thousands of dollars in earnest money.

4           **Shaia Beckwith Simmons**

5           36. Plaintiff Shaia Beckwith Simmons is a public relations expert, community  
6 advocate, and motivational speaker, with a Bachelor's in Business Administration and  
7 Management and a Master's in Educational Leadership and Administration from Florida A&M  
8 University. She and her husband, the head coach of Florida A&M's Division I football team, are  
9 pillars of their local community.  
10

11           37. Simmons is a well-qualified African American home borrower who obtained a  
12 home mortgage loan from Wells Fargo in 2009 and refinanced it for a lower interest rate in 2013.

13           38. Simmons is a model homeowner and has timely made her monthly payments  
14 without incident. During the COVID-19 pandemic, as required by the CARES Act, Wells Fargo  
15 offered existing home mortgage borrowers the option to defer their payments. Simmons accepted  
16 Wells Fargo's deferment option, which allowed her to restructure her loan to defer monthly  
17 payments during the pandemic and instead make those monthly payments at the end of her loan.  
18

19           39. After several months of approved deferments, Simmons promptly resumed making  
20 her mortgage payments in full, as she had done for decades without issue.

21           40. Yet consistent with its nationwide discriminatory practices, Wells Fargo  
22 maliciously and unlawfully instituted foreclosure proceedings against Simmons without prior  
23 notice, asserting without justification that Simmons was in default for failure to make mortgage  
24 payments during her deferment.  
25

26           41. Consistent with its nationwide practices of predatory lending to extract wealth  
27 from Black and/or African American customers, Wells Fargo presented Simmons with an  
28

1 ultimatum: she could renegotiate her loan, potentially at a higher interest rate that would cost her  
2 many thousands of dollars over the remaining life of the loan, or Wells Fargo would persist with  
3 the unjustified foreclosure to take her home away from her and resell it in a booming market.

4 42. Simmons refused to renegotiate her loan and is resisting the wrongful foreclosure,  
5 which remains pending.

6 43. Wells Fargo's unlawful actions have caused Simmons emotional distress, and the  
7 pendency of the wrongful foreclosure and filing of a lis pendens against her property have  
8 damaged Simmons's credit rating, causing further injury.

#### 9 CLASS ALLEGATIONS

10 44. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil  
11 Procedure on behalf of himself and a class of Black and/or African American applicants or  
12 borrowers who applied for, received, or maintained credit from Defendants related to residential  
13 real estate and who were subjected to discrimination by Defendants due to their race. Plaintiffs  
14 seek certification of a liability and injunctive and declaratory relief class under Rule 23(b)(2) and  
15 23(c)(4), and/or certification of a broader class under Rule 23(b)(3). All requirements of class  
16 certification are met by the proposed class.

17 45. The class of Black and/or African American participants in Wells Fargo's home  
18 lending process is so numerous that joinder of all members is impracticable. Fed. R. Civ. P.  
19 23(a)(1).

20 46. There are questions of law and fact common to the class, and those questions can  
21 and should be resolved in a single proceeding that furthers this litigation. Fed. R. Civ. P. 23(a)(2).

22 47. The claims alleged by Plaintiffs are typical of the claims of the class. Fed. R. Civ.  
23 P. 23(a)(3).

50. Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with regard to the class as a whole. Fed. R. Civ. P. 23(b)(2).

**COUNT I**

52. Plaintiffs, on behalf of themselves and all those similarly situated, reallege each and every paragraph above and incorporate them by reference as though fully stated herein.

54. As described above, Defendants are creditors because they regularly extend, renew, and continue credit, and Plaintiffs were applicants for credit.

AMENDED  
COMPLAINT

1 systemic race discrimination against Black and/or African American mortgage loan applicants  
2 and borrowers that constitutes illegal intentional race discrimination in violation of the Equal  
3 Credit Opportunity Act.

4 56. Plaintiffs and all those similarly situated were subjected to and harmed by  
5 Defendant's systemic and individual discrimination.  
6

7 57. Defendants' unlawful conduct resulted in considerable harm to Plaintiffs and all  
8 those similarly situated.

9 58. On behalf of themselves and the class they seek to present, Plaintiffs request the  
10 relief set forth below.

11 **COUNT II**

12 **RACE DISCRIMINATION IN VIOLATION**  
13 **OF 42 U.S.C. § 1981**

14 59. Plaintiffs, on behalf of themselves and all those similarly situated, reallege each  
15 and every paragraph above and incorporate them by reference as though fully stated herein.  
16

17 60. Under 42 U.S.C. § 1981, persons of all races are guaranteed the same right to  
18 make and enforce contracts, regardless of race. The term "make and enforce" contracts includes  
19 the making, performance, modification, and termination of contracts, and the enjoyment of all  
20 benefits, privileges, terms, and conditions of the contractual relationship.

21 61. Defendants maintained a nationwide set of uniform, discriminatory mortgage loan  
22 origination, refinancing, and underwriting practices and engaged in a pattern or practice of  
23 systemic race discrimination against Black and/or African American mortgage loan applicants  
24 and borrowers that constitutes illegal intentional race discrimination in the making and  
25 modification of contracts in violation of 42 U.S.C. § 1981.  
26

62. Plaintiffs and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

63. On behalf of themselves and the class they seek to present, Plaintiffs request the relief set forth below.

**COUNT III**

**RACE DISCRIMINATION IN VIOLATION  
OF 42 U.S.C. § 1982**

64. Plaintiffs reallege each and every paragraph above and incorporate them by reference as though fully stated herein.

65. Under 42 U.S.C. § 1982, all citizens are guaranteed the same right to inherit, purchase, lease, sell, hold, and convey real and personal property, regardless of race.

66. As set forth above, Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination, refinancing, and underwriting practices and engaged in a pattern or practice of systemic race discrimination against Black and/or African American mortgage loan applicants and borrowers that constitutes illegal intentional race discrimination and disparately impacts Black and/or African American applicants and borrowers in violation of 42 U.S.C. § 1982.

67. Plaintiffs and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

68. On behalf of themselves and the class they seek to present, Plaintiffs request the relief set forth below.

**COUNT IV**

**RACE DISCRIMINATION IN VIOLATION OF  
THE FAIR HOUSING ACT OF 1968, 42 U.S.C § 3601 *et seq.***

69. Plaintiffs reallege each and every paragraph above and incorporate them by reference as though fully stated herein.

70. The Fair Housing Act, 42 U.S.C. § 3605(a), prohibits any entity whose business includes engaging in residential real estate-related transactions from discriminating against any person in making available such a transaction on the basis of race.

71. Defendants' business includes engaging in residential real estate-related transactions.

72. As set forth above, Defendants maintained a nationwide set of uniform, discriminatory mortgage loan origination, refinancing, and underwriting practices and engaged in a pattern or practice of systemic race discrimination against Black and/or African American mortgage loan applicants and borrowers that constitutes illegal intentional race discrimination and disparately impacts Black and/or African American mortgage loan applicants and borrowers in violation of the Fair Housing Act of 1968.

73. Plaintiffs and all those similarly situated were subjected to and harmed by Defendants' systemic and individual discrimination.

74. On behalf of themselves and the class they seek to present, Plaintiffs request the relief set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court find against Defendants as follows:

- a. Certify this case as a class action;

- b. Designate Plaintiffs as Class Representatives and designate Plaintiffs' counsel of record as Class Counsel;
- c. Declare that Defendants' acts, conduct, policies and practices are unlawful and violate the Equal Credit Opportunity Act, 42 U.S.C. §§ 1981 and 1982, and the Fair Housing Act;
- d. Declare that Wells Fargo engaged in a pattern and practice of racial discrimination against Black and/or African American applicants and borrowers;
- e. Order Plaintiffs and all others similarly situated offered mortgage loans at non-discriminatory rates, and otherwise make Plaintiffs whole;
- f. Award Plaintiffs and all others similarly situated compensatory and punitive damages;
- i. Award Plaintiffs and all others similarly situated prejudgment interest and attorneys fees, costs and disbursements, as provided by law;
- j. Award Plaintiffs and all others similarly situated such other make whole equitable, injunctive and legal relief as this Court deems just and proper to end the discrimination and fairly compensate Plaintiffs and all others similarly situated.
- k. Award Plaintiffs and all others similarly situated such other relief as this Court deems just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure and Civil Local Rule 3-6.

Respectfully submitted,

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*Attorneys for Plaintiffs Williams, Albury, Simmons,  
individually and on behalf of all others similarly  
situated*

**DEFENDANTS' MOTION TO DISMISS OR ALTERNATIVELY  
TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

**EXHIBIT B**

***In re Wells Fargo Mortgage Discrimination Litigation***  
**Case No. 3:22-cv-00990-JD**

**CA ECF No. 114 – *California Consolidated Complaint***

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6  
7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION  
10

11 *In re Wells Fargo Mortgage*  
12 *Discrimination Litigation.*

Case No. 3:22-cv-00990-JD

Honorable James Donato

13 **AMENDED AND CONSOLIDATED**  
14 **CLASS ACTION COMPLAINT**  
15 **FOR:**

- 16 **1. VIOLATION OF THE EQUAL**  
**CREDIT OPPORTUNITY ACT,**  
**15 U.S.C. § 1691, ET SEQ.**  
17 **2. RACE DISCRIMINATION IN**  
**VIOLATION OF THE FAIR**  
18 **HOUSING ACT OF 1968, 42**  
19 **U.S.C. § 3601, ET SEQ.**  
20 **3. RACE DISCRIMINATION IN**  
**VIOLATION OF 42 U.S.C. § 1981**  
21 **4. VIOLATION OF THE UNRUH**  
**CIVIL RIGHTS ACT,**  
22 **CALIFORNIA CIVIL CODE § 51**  
23 **5. VIOLATION OF THE**  
24 **CALIFORNIA UNFAIR**  
25 **COMPETITION LAW**

26 **DEMAND FOR JURY TRIAL**  
27  
28

1 Plaintiffs Aaron Braxton, Paul Martin, Gia Gray, Bryan Brown, Elretha  
 2 Perkins, Christopher Williams, Ifeoma Ebo and Terah Kuykendall-Montoya,  
 3 individually and as representatives of a nationwide class of similarly situated  
 4 applicants for original purchase mortgage, refinance and other home mortgage loans  
 5 (collectively, “Plaintiffs” or the “Class”), allege as follows:

## 6 **I. NATURE OF ACTION**

7 1. The benefits of homeownership have long been the cornerstone of the  
 8 American Dream, allowing people, regardless of economic status, to accumulate  
 9 wealth by gaining access to credit, building equity, and reducing housing costs.<sup>1</sup>

10 2. These benefits, however, have for far too long been unattainable for a  
 11 disproportionate number of non-white Americans, and more difficult for such  
 12 Americans to maintain once achieved. For example, historically, Black Americans  
 13 have been repeatedly and systematically denied access to the financial benefits of  
 14 homeownership through pernicious and pervasive race-based policies and practices.  
 15 These included, for example, the Federal Housing Administration’s refusal to insure  
 16 mortgages in and near minority neighborhoods—a practice now referred to as  
 17 “redlining”—at the same time that the FHA subsidized builders who mass-produced  
 18 entire subdivisions for white Americans.

19 3. The passage of civil rights legislation in the 1960s, together with  
 20 amendments to that legislation in the ensuing decades, was supposed to remedy that  
 21 historical injustice by eliminating race-based gatekeeping practices like redlining  
 22 and restrictive covenants. Despite the promise of this legislation, many minorities  
 23 continue to face discrimination in the realm of home ownership and continue to find  
 24 themselves hampered by lingering vestiges of this country’s explicitly racist past.

25 4. Over the past few years, historically low interest rates created  
 26 unprecedented opportunities for prospective homeowners to obtain original purchase

27 <sup>1</sup> [https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-](https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-american-dream/?sh=1c78499623b5)  
 28 [and-the-american-dream/?sh=1c78499623b5](https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-american-dream/?sh=1c78499623b5).

1 mortgage loans to buy their first homes and for existing homeowners to refinance  
2 their mortgages or access equity in their homes on much more favorable terms.  
3 Original purchase mortgage loans at low interest rates allow potential homeowners  
4 to acquire suitable homes with manageable monthly payments. Refinanced  
5 mortgages and other home loan products allow homeowners to reduce their monthly  
6 payments (as well as the overall interest due during the life of their loan) and access  
7 equity while still building wealth through their homes. Not surprisingly, millions of  
8 Americans sought to purchase a new home at a low interest rate, refinance existing  
9 loans or obtain additional home loan products.

10         5. But far too many would find the door to these opportunities closed for  
11 no other reason than their racial or ethnic background. More specifically, non-white  
12 applicants for home loans from the defendants in this case—Wells Fargo Bank,  
13 N.A., Wells Fargo & Co., and Wells Fargo Home Mortgage (collectively,  
14 “Defendants” or “Wells Fargo”)—had their applications intentionally and  
15 disproportionately denied, faced unjustified delays in the processing of their  
16 applications, and/or were given less favorable terms than similarly qualified white  
17 Americans. This was the result of Wells Fargo systematically engaging in a new  
18 form of redlining that harmed Plaintiffs and the Class based on their race and  
19 ethnicity.

20         6. In 2020, for instance, according to an analysis of nationwide data  
21 published under the Home Mortgage Disclosure Act, Wells Fargo approved  
22 approximately 67.1% of white borrowers who applied for a mortgage, compared to  
23 only 51.8% of Black and/or African American applicants.

24         7. When Wells Fargo approves non-white borrowers’ mortgage  
25 applications, it often does so on substantially worse terms than those offered to  
26 white borrowers. Again, take the case of Black applicants: nationwide, in 2020, the  
27 average interest rate Wells Fargo charged to Black borrowers was 3.34%, versus  
28 3.23% for white borrowers. The difference is statistically significant at over 17

1 standard deviations.<sup>2</sup>

2       8. Wells Fargo also frequently imposes higher costs on non-white  
3 borrowers relative to the size of their loans. For example, in 2020, Black borrowers  
4 nationwide had to spend, on average, 2.0% of their Wells Fargo loan value on costs  
5 and fees, versus 1.7% for white borrowers. The disparity is statistically significant  
6 at 9 standard deviations.

7       9. With respect to refinancing, Wells Fargo *denied the applications of*  
8 *over 50%* of the Black applicants seeking to refinance in 2020, and *denied the*  
9 *applications of just under 50%* of the Black applicants seeking to refinance in 2021.  
10 No other major lending institution refused to refinance the homes of Black  
11 applicants at such stunning rates.

12       10. Wells Fargo was the only major lender in the United States that  
13 approved a smaller share of refinancing applications from Black homeowners in  
14 2020 than it had in 2010.<sup>3</sup> That year, while Wells Fargo approved 71% of the  
15 residential refinancing applications submitted by white Americans, it approved only  
16 **47%** of residential refinance applications submitted by Black applicants, **53%** of  
17 residential refinancing applications submitted by applicants identified as Hispanic  
18 and/or Latino, and **67%** of residential refinancing applications submitted by Asian  
19 American applicants. When compared to other lenders, which had approval rates of  
20 **71%, 79%, and 85%**, respectively, for the same racial groups, Wells Fargo's  
21 statistics are stark. This clear disparity in outcomes is especially significant in light  
22 of data compiled by the National Community Reinvestment Coalition showing that

23 \_\_\_\_\_  
24 <sup>2</sup> When evaluating statistical disparities like the one described above, statisticians  
25 use a tool called the "standard deviation." The more standard deviations, the more  
26 the observed result deviates from the expected result and the less likely the disparity  
27 is due to random chance. Courts and statisticians consider a disparity "statistically  
28 significant"—meaning that there is a 95% level of confidence that random chance  
did not cause the disparity—at 1.96 standard deviations. In this case, the difference  
in approvals is statistically significant at *over 29 standard deviations*.

<sup>3</sup> *Id.*

1 in 2020, origination rates for non-white Americans including Black Americans  
2 across all lending institutions reflected a significant *increase*, from 53.7% to  
3 59.4%.<sup>4</sup>

4 11. The story in 2021 was the same, with Wells Fargo approving a much  
5 lower percentage of Black refinancing applicants than any other lender.<sup>5</sup> Wells  
6 Fargo approved only 58% of Black applicants compared to other lenders, which  
7 approved 74% of Black homeowner applicants.<sup>6</sup> And the disparity between Black  
8 and white refinancing approval rates was 21% at Wells Fargo, nearly double the  
9 disparity (13%) for all other for other lenders.<sup>7</sup> And while Wells Fargo's Black  
10 homeowner refinancing approval rate improved slightly from 2020, the same was  
11 true for all other lenders, due to broader economic conditions.<sup>8</sup> By comparison,  
12 other major lenders approved much higher rates of Black homeowner refinancing  
13 applicants in 2021: JP Morgan Chase & Co. approved 87% of Black homeowner  
14 applicants (only 6% less than White applicants), Rocket Mortgage LLC approved  
15 81% of Black homeowner applicants (only 7% less than White applicants), and  
16 Bank of America Corporation approved 75% of Black homeowner applicants (only  
17 11% less than White applicants).<sup>9</sup>

18 12. Overall, the data released under the federal Home Mortgage  
19 Disclosure Act shows unequivocally that Wells Fargo rejects a disproportionate  
20 number of non-white applicants.<sup>10</sup> Wells Fargo also makes the application process

21 <sup>4</sup> <https://ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/>

22 <sup>5</sup> [https://www.bloomberg.com/news/articles/2022-03-25/wells-fargo-faces-](https://www.bloomberg.com/news/articles/2022-03-25/wells-fargo-faces-persistent-racial-gap-in-mortgage-refinancing)  
23 [persistent-racial-gap-in-mortgage-refinancing](https://www.bloomberg.com/news/articles/2022-03-25/wells-fargo-faces-persistent-racial-gap-in-mortgage-refinancing).

24 <sup>6</sup> *Id.*

25 <sup>7</sup> *Id.*

26 <sup>8</sup> *Id.*

27 <sup>9</sup> *Id.*

28 <sup>10</sup> [https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-](https://www.bloomberg.com/graphics/2022-wells-fargo-Black-home-loan-refinancing/)  
refinancing/.

1 more difficult for non-white applicants on a national scale.<sup>11</sup> For example, Wells  
 2 Fargo customers report loan officers stating that Wells Fargo’s refinancing  
 3 calculation tools consider certain “areas” with large Black populations to be  
 4 ineligible for rapid valuations.<sup>12</sup> Non-white applicants are further subjected to  
 5 delays, feigned mistakes, and other obstacles, leading many to withdraw their  
 6 applications and others to wait indefinitely while Wells Fargo refuses to act.

7 13. Wells Fargo also charges higher costs and interest rates to non-white  
 8 customers who obtain refinancing. For example, in 2020, Wells Fargo charged the  
 9 average national Black and/or African American refinancing recipient 3.18% versus  
 10 3.11% for white refinancing recipients, and charged Black and/or African American  
 11 customers an average of \$5,335 in costs and fees versus \$4,193 for white borrowers,  
 12 for an average cost of borrowing of 2.6% for Black and/or African American  
 13 customers versus 1.8% for white borrowers. All these disparities are statistically  
 14 significant.

15 14. In light of this, Wells Fargo’s stated commitment to “help[] ensure  
 16 that all people across our workforce, our communities, and our supply chain feel  
 17 valued and respected and have equal access to resources, services, products, and  
 18 opportunities to succeed”<sup>13</sup> rings hollow. Instead, Wells Fargo pervasively denies  
 19 non-white homeowners’ refinancing applications and consistently delays the  
 20 applications it does not deny, in many cases ultimately forcing such homeowners  
 21 into foreclosure.<sup>14</sup>

22 15. Much responsibility for the breadth of Wells Fargo’s discriminatory  
 23 treatment of non-white mortgage and refinancing applicants lies with its decision to  
 24 employ centralized, universal, race-infected lending algorithms to differentially

25 <sup>11</sup> *Id.*

26 <sup>12</sup> *Id.*

27 <sup>13</sup> <https://www.wellsfargo.com/about/diversity/diversity-and-inclusion/>.

28 <sup>14</sup> [https://www.nclc.org/images/pdf/special\\_projects/covid-19/IB\\_Covid\\_Black\\_Forbearance\\_Foreclosure.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Covid_Black_Forbearance_Foreclosure.pdf).

1 assess, delay and ultimately reject residential lending applications. By using these  
2 algorithms and by failing to properly monitor and correct the lending algorithms,  
3 Wells Fargo engages in a practice of “*digital redlining*” that Wells Fargo knows  
4 intentionally and disproportionately discriminates against applicants based on their  
5 race and ethnicity.

6 16. Used properly, automated underwriting technology can help  
7 individual loan officers who are properly trained and familiar with the legal  
8 environment in which banks operate make sound, individualized underwriting  
9 decisions that protect the interests of borrowers, banks, investors, insurers and the  
10 federal government, taking into account race-neutral data points and employing  
11 formulae based on those data points to decide whether the proposed loan is in the  
12 best interest of the bank and the borrower.

13 17. But that is not how Wells Fargo utilized its automated underwriting  
14 technology. Quite the contrary: during a period of time that included the COVID-19  
15 pandemic, Wells Fargo systematically jettisoned or otherwise ignored well-  
16 established internal fair lending checks and balances in favor of implementing a  
17 centralized “pioneering automated underwriting” system—sometimes referred to as  
18 CORE—without sufficient, or sometimes any, human supervision or involvement.

19 18. The problem became worse when multiple loan processors and  
20 underwriters were terminated or otherwise left the bank’s residential lending  
21 operations and were not replaced. Instead, the CORE “pioneering automated  
22 underwriting system” was increasingly centralized to facilitate at-home work by  
23 originators, processors, and underwriters. The coding and machine learning  
24 endemic to the CORE algorithmic underwriting platform were—byte by byte—  
25 stuffed chock-full of Wells Fargo-generated geographic, demographic, race-  
26 stratified liquidity, appraisal, and other “overlays” that Wells Fargo knew served no  
27 legitimate underwriting basis but, instead, functioned as signals for race  
28 discrimination in Wells Fargo’s residential lending decisions.

1           19.       These and other “overlays” pervasively infecting Wells Fargo’s  
2 CORE algorithms became even more invidious with each successive denial, which  
3 taught the algorithm these denials were appropriate. This ultimately served Wells  
4 Fargo’s purpose of segregating the creditworthiness of prospective applicants based  
5 on protected characteristics such as their race and ethnicity, and differentiated Wells  
6 Fargo’s assessments from those of the other major lending institutions.

7           20.       Moreover, Wells Fargo loan processors supposedly responsible for  
8 shepherding applications through the bank’s systems, who were previously expected  
9 to process 30 applications per month, were later forced by Wells Fargo’s CORE  
10 platform to process more than 50 and sometimes nearly 100 per month. They were  
11 also rendered powerless to supervise the process, override the algorithm, or  
12 otherwise intervene on the side of basic compliance with fair housing laws.

13           21.       Non-white applicants are not less creditworthy than white applicants.  
14 To the contrary, when fairly evaluated, the applications of non-white applicants  
15 should have resulted in equal treatment. For example, Wells Fargo knowingly  
16 incorporates, without adjustment, appraisals that have been shaped by years of race-  
17 based valuation standards or appraisals affected by race-based criteria. Homes in  
18 majority Black neighborhoods are worth an average of 23% less than homes in  
19 neighborhoods with “very few or no Black residents” and of similar home quality.<sup>15</sup>

20           22.       In September 2021, the Federal Home Loan Mortgage Corporation  
21 released the results of a five-year study based on more than 12 million appraisals.<sup>16</sup>  
22 The study found that “Appraisers’ opinions of value are more likely to fall below the  
23 contract price in Black and Latino census tracts, and the extent of the gap increases

24 \_\_\_\_\_  
25 <sup>15</sup> [https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=sent\\_to\\_newsletter\\_test\\_business&stream=top#\\_ga=2.213288596.1000901909.1649553887-1080662765.1648140872](https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/?utm_source=newsletter&utm_medium=email&utm_campaign=sent_to_newsletter_test_business&stream=top#_ga=2.213288596.1000901909.1649553887-1080662765.1648140872).

27 <sup>16</sup> <https://www.freddiemac.com/research/insight/20210920-home-appraisals>.

1 as the percentage of Black or Latino people in the tract increases.”<sup>17</sup> Wells Fargo’s  
 2 discrimination has not only led to delays in the application process for Black  
 3 applicants but has forced those who received below-market appraisals from Wells  
 4 Fargo to abandon the process with Wells Fargo and turn elsewhere.

5       23. Plaintiffs, and members of the proposed Class, are the victims of  
 6 Wells Fargo’s pervasive misconduct: non-white applicants for home loans from  
 7 across the country whose applications to obtain a home mortgage, refinance their  
 8 existing home loans or access equity in their homes have been systematically  
 9 delayed or denied because Wells Fargo discriminates against them. Tens of  
 10 thousands have been victimized both by Wells Fargo’s intentional, knowing and  
 11 systematic race discrimination and the disparate impact of its practices, violating the  
 12 contractual, commercial and civil rights of Class members and causing millions (and  
 13 perhaps billions) of dollars in damages to the Class. Individually and as  
 14 representatives of the Class (defined below), Plaintiffs bring this action to enjoin  
 15 Wells Fargo’s present-day redlining and related discriminatory practices, to make  
 16 good to the Class all damages resulting from its violations of civil rights laws, and to  
 17 restore to the Class any amounts to which they otherwise would have been entitled,  
 18 together with such other equitable and remedial relief as the Court may deem  
 19 appropriate.

## 20                                   **II. JURISDICTION AND VENUE**

21       24. This Court has federal question jurisdiction over this matter pursuant  
 22 to 28 U.S.C. §§ 1331, 1332(d), and 1343 because Plaintiffs assert federal causes of  
 23 action, because Plaintiffs assert civil rights causes of action, because at least one  
 24 member of the Class is a citizen of a different state than all Defendants, and because  
 25 the amount in controversy exceeds \$5,000,000.

26       25. Personal jurisdiction is appropriate over Defendants because Wells

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27 <sup>17</sup> *Id.*  
 28

Fargo Bank, N.A. transacts business in the State of California and has its principal place of business in San Francisco, California, Wells Fargo Home Mortgage, Inc. originates loans to California customers from its California offices and maintains a systematic and continuous presence in the State, and Wells Fargo & Co. has its corporate headquarters in San Francisco, California.

26. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) because Wells Fargo Bank, N.A. resides in this district, a substantial part of the events or omissions giving rise to the claim occurred in this district, Wells Fargo Bank, N.A.’s principal place of business is in this district, and Wells Fargo & Co. has its corporate headquarters in this district.

### III. PARTIES

#### Aaron Braxton

27. Plaintiff Aaron Braxton, who is a Black homeowner, is a natural person and a citizen of the State of California and resides in Los Angeles, California.

28. Mr. Braxton is one victim of Wells Fargo’s discriminatory policies and practices. He is a financially successful and eminently creditworthy Black playwright, performer, and math and science teacher with a Master’s degree from the University of Southern California.<sup>18</sup> He has authored several award-winning plays, including *DID YOU DO YOUR HOMEWORK?*, which broke the Beverly Hills Playhouse’s record for longest running play (nine months).<sup>19</sup> He has also written several films and television pilots and acted in several film, television, and theatre projects.<sup>20</sup>

29. In addition, for two decades, Mr. Braxton was a Wells Fargo mortgage customer. He purchased his home in 2000, in a historically Black

<sup>18</sup> [https://www.imdb.com/name/nm1347914/bio?ref\\_=nm\\_ov\\_bio\\_sm](https://www.imdb.com/name/nm1347914/bio?ref_=nm_ov_bio_sm).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

1 neighborhood located in South Los Angeles near the campus of the University of  
2 Southern California, and financed his purchase with a Wells Fargo home mortgage  
3 insured by the FHA. Mr. Braxton always made his mortgage payments and paid his  
4 bills on time, and he had a good credit score.

5 30. Despite his successful career and creditworthiness, when Mr. Braxton  
6 sought to refinance his home mortgage loan in August of 2019, Wells Fargo  
7 consistently obstructed the process. Despite favorable loan-to-value metrics and his  
8 personal history with the institution, Wells Fargo was focused more on his race and  
9 the location of his home within a historically Black Los Angeles neighborhood, and  
10 used the fact of his race and the location of his home to delay, obstruct, and deny  
11 him the full benefits of historically low home mortgage interest rates. Wells Fargo  
12 did this even though, having paid his loans for more than 18 years, Mr. Braxton had  
13 equity in his home far greater than the amount remaining on his FHA-insured loan.

14 31. Mr. Braxton was given the runaround to such an extent that it took  
15 him over nine months to refinance his federally backed mortgage loan (and 12  
16 months to refinance his home equity loan) at an above-market interest rate of around  
17 4%. This was after various Wells Fargo representatives kept telling him they lost  
18 his paperwork, made incomplete inquiries and needed to request more information,  
19 delayed their responses, and even placed him into an unsolicited debt-trap deferred  
20 payment program without his permission. It was only after Mr. Braxton notified the  
21 Department of Housing and Urban Development (“HUD”) that Wells Fargo  
22 approved the refinancing of his federally backed FHA loans (indeed, Wells Fargo  
23 approved the application the very next day). Of course, for the prolonged period  
24 that Mr. Braxton was waiting for Wells Fargo to refinance his loans, he was paying  
25 the higher rates associated with his original loans.

26 Paul Martin

27 32. Plaintiff Paul Martin, who is a Black homeowner, is a natural person  
28 and a citizen of the State of California and resides in Los Angeles, California.

1           33.       Mr. Martin has been a Hollywood entertainment executive at Sony  
2 Pictures for 14 years. In 2020, he sought to refinance his home in the Ladera  
3 Heights neighborhood of Los Angeles, which has a higher proportion of affluent  
4 Black residents than most Los Angeles neighborhoods. His multimillion-dollar  
5 home was previously owned by WNBA superstar Lisa Leslie and NBA player  
6 Aaron Afflalo.

7           34.       But Wells Fargo demanded that Mr. Martin first apply for a home  
8 equity line of credit (HELOC), before they would consider him for a loan refinance.  
9 Ultimately, Wells Fargo refused to provide Mr. Martin with the HELOC or  
10 refinance Mr. Martin's loan. The bank would not do either unless he could get his  
11 home appraised for \$2 million. Wells Fargo's appraiser refused to come inside Mr.  
12 Martin's home, and appraised it at just shy of \$2 million based on comparisons with  
13 homes in less affluent, Black-populated neighborhoods, apparently conflating all  
14 areas with a high concentration of Black residents. Mr. Martin went to another  
15 lender, who appraised the home at \$2.4 million and promptly refinanced his loan.

16                               Gia Gray

17           35.       Plaintiff Gia Gray, who is a Black homeowner, is a natural person and  
18 a citizen of the State of California and resides in Danville, California. Dr. Gray is a  
19 physician.

20           36.       Dr. Gray is another victim of Wells Fargo's discriminatory policies  
21 and practices. She is in the top quintile of income earners. The same was true when  
22 she applied to refinance her loans with Wells Fargo. Dr. Gray's FICO score is  
23 above 800.

24           37.       Dr. Gray, together with her husband, owns income properties in  
25 Stockton, California and Chicago, Illinois, and a primary residence in Danville,  
26 California. The couple had Wells Fargo mortgages for all three of their homes, and,  
27 save for a balance of approximately \$1,000 on a credit card, the couple has and had  
28 no other debt. The couple never missed a mortgage payment and always paid on

1 time. They began the refinancing process for their homes in February 2020.

2 38. The Grays were denied refinancing on their two income properties  
3 outright; Wells Fargo refused to even accept an application for these homes. Wells  
4 Fargo would not return their calls with inquiries on refinancing these two properties.  
5 When the couple did manage to get a hold of the assistant or loan officer, they were  
6 told that the Stockton, California property was in a bad area, and that the Chicago,  
7 Illinois property, although in a good area, was high risk, and that Wells Fargo was  
8 not looking to refinance high-risk areas. Frustrated by Wells Fargo's ambivalence  
9 and inaction, the couple gave up on refinancing these properties in December 2020,  
10 nearly a year after they started the process. Wells Fargo did refinance Ms. Gray's  
11 California property, which is in a predominantly white area of California.

12 Bryan Brown

13 39. Plaintiff Bryan Brown, who is a Black homeowner, is a natural person  
14 and a citizen of the State of Connecticut and resides in Bristol, Connecticut.

15 40. Mr. Brown is another victim of Wells Fargo's discriminatory policies  
16 and practices. For the past two decades, Mr. Brown has been a CAD designer at a  
17 prominent engineering company in Connecticut, and has invested in residential  
18 properties in Bristol and Plymouth, Connecticut.

19 41. Mr. Brown is a long-time Wells Fargo mortgage customer. Having  
20 purchased his multi-unit home in December 2010 with a Wells Fargo home  
21 mortgage, he has always made his mortgage payments, paid his bills on time, and  
22 maintained a good credit score.

23 42. In October 2020, Mr. Brown sought to refinance his loan to convert  
24 his conventional 30-year loan to a 15-year fixed mortgage and to obtain a lower  
25 interest rate.

26 43. Despite his investment properties, longstanding employment, and  
27 creditworthiness, when Mr. Brown sought to refinance his home mortgage, Wells  
28 Fargo subjected him to long periods of non-responsiveness, arbitrary requests for

1 additional documents, and multiple calls to his employer requesting verification of  
2 his employment. Despite favorable loan-to-value metrics and his personal history  
3 with the institution, Wells Fargo denied Mr. Brown's application to refinance after a  
4 four-month runaround. Wells Fargo did this even though, having paid his loan for  
5 more than ten years, Mr. Brown had equity in his home that was almost equal to the  
6 amount remaining on his loan.

7 44. To this day, Mr. Brown's interest rate remains at 4.75%.

8 Elretha Perkins

9 45. Plaintiff Elretha Perkins is a Black female homeowner with a 720  
10 credit score, and is a natural person and citizen of North Carolina. She owns homes  
11 in both Eden, North Carolina and Dacula, Georgia. Her Dacula, Georgia home was  
12 financed through Wells Fargo. She has been a Wells Fargo customer for nearly 20  
13 years.

14 46. Ms. Perkins is also one of the many Americans impacted by Wells  
15 Fargo's discriminatory scheme. She is a successful small business owner with more  
16 than 40 years' experience in North Carolina's childcare and transportation  
17 industries. She is a business leader, a graduate of North Carolina A&T State  
18 University—a prominent Historically Black College—and a leader within her local  
19 African American community. In addition to her personal successes, she has raised  
20 extremely successful children who are active in Georgia's film and entertainment  
21 industry.

22 47. Despite Ms. Perkins consistently making payments on her home loan  
23 and her exemplary credit score and creditworthiness, her refinance application was  
24 subjected to delay, pretextual excuses and overt acts of discrimination by Wells  
25 Fargo, including mandating that in order for her to refinance her HELOC, she would  
26 have to apply for and be granted a modification under a "hardship" program as if the  
27 loan was distress—even though she was not facing any financial hardship or need to  
28 modify the loan under a loss mitigation program. Wells Fargo required her to

1 approach third-party entities to simply make payments on her HELOC, ultimately  
2 giving her the runaround to such an extent that she has had to submit the same tax  
3 and income documents multiple times and face more delays from Wells Fargo in the  
4 processing of her refinance request.

5 Christopher Williams

6 48. Plaintiff Christopher Williams is a Black male and a citizen of  
7 Georgia. As described below, Mr. Williams applied for a HELOC with Wells Fargo  
8 and was subjected to racial discrimination in Wells Fargo's mortgage lending  
9 process.

10 49. When he applied for his mortgage loan, he was highly creditworthy, as  
11 reflected in his high FICO score of over 750. Based on this, Mr. Williams believed  
12 he should have qualified for Wells Fargo's prime interest rate, which would have  
13 saved him substantial money over time on his home mortgage. However, consistent  
14 with Wells Fargo's pattern of discrimination against Black applicants, Wells Fargo  
15 offered him an interest rate nearly three points higher than the prime interest rate  
16 offered by Wells Fargo, which is disproportionately and discriminatorily offered to  
17 white applicants.

18 50. Believing it to be a mistake, Mr. Williams spoke to Wells Fargo's  
19 home lending department to have his credit report rechecked and for his interest rate  
20 to be lowered. Instead, Wells Fargo refused to reconsider his credit score or his  
21 interest rate. Wells Fargo agreed to revisit its refusal to extend the loan to Mr.  
22 Williams on favorable terms. However, in a letter dated September 5, 2019, Wells  
23 Fargo articulated for the first time, that it did not use solely FICO credit scores to  
24 determine home interest rates, but instead used "a unique scoring model, which  
25 considers more than credit scores to evaluate applications."

26 51. Indeed, the "other" factors used by Wells Fargo to determine interest  
27 rates for home loans serve to intentionally exclude Black applicants from affordable  
28 and lower-risk loans, force Black applicants to pay higher interest rates and other

1 fees than similarly situated white borrowers, and have a disparate impact based on  
2 race.

3 Ifeoma Ebo

4 52. Plaintiff Ifeoma Ebo is a Black American and citizen of New York  
5 and thus is a member of a protected class.

6 53. In late 2021, Ms. Ebo began the process of searching for a new home  
7 to purchase. That search ended in October 2021, when Ms. Ebo found a property  
8 located in Kings County, New York—more specifically, the East Flatbush  
9 neighborhood of Brooklyn—and entered into a contract to purchase it for the price  
10 of \$900,000. Thereafter, Ms. Ebo submitted an application for a mortgage loan to  
11 Wells Fargo in connection with the purchase of the property.

12 54. At the time Ms. Ebo applied for the loan, Ebo had a credit score of  
13 approximately 800, an annual income of approximately \$178,000, and no significant  
14 debt.

15 55. On November 1, 2021, Ms. Ebo received preapproval from Wells  
16 Fargo for a mortgage loan in the amount of \$883,698 (the “Loan”), which would be  
17 used to purchase the Property. According to Wells Fargo, Ms. Ebo’s preapproval  
18 was to expire on February 24, 2022.

19 56. After Ms. Ebo’s Application was preapproved, Ms. Ebo began  
20 working with Wells Fargo to receive final approval for the Loan.

21 57. Per Wells Fargo’s requests, Ms. Ebo submitted all necessary  
22 documentation to verify her qualifications for the Loan. Ms. Ebo timely provided  
23 Wells Fargo with documentation such as W-2 forms, paystubs, bank account  
24 statements, and similar documents.

25 58. On December 29, 2021, Ms. Ebo received a “Commitment Letter”  
26 from Wells Fargo. According to the Commitment Letter, Ms. Ebo’s Application  
27 was approved, and she only needed to submit some additional documentation “in  
28 order to complete the final underwriting and funding of” her Loan.

59. In January and February 2022, Wells Fargo informed Ms. Ebo that it required additional documentation to complete the underwriting process relative to Ms. Ebo's Application.

60. Notably, some of the additional documentation that Wells Fargo requested in January and February 2022 had already been submitted by Ms. Ebo (e.g., recent paystubs from Ms. Ebo's employers).

61. Other documentation requested by Wells Fargo in January and February 2022 was unnecessary, unduly burdensome, and irrelevant to Ms. Ebo's qualifications for the loan. For example, in one instance, Wells Fargo requested a written explanation as to why Ms. Ebo made a monthly credit card payment in the amount of \$290 on her own credit card. In another instance, Wells Fargo requested a bank statement for a bank account that did not even exist.

62. As Wells Fargo's duplicative and unnecessary requests for documentation continued into February 2022, Ms. Ebo expressed her concern to Wells Fargo that she would not be able to complete the loan application process by the time that her preapproval expired on February 24, 2022. Nevertheless, as of February 24, 2022, Ms. Ebo's loan still had yet to receive final approval.

63. In March 2022, Wells Fargo continued to request additional documentation, much of which was duplicative of documentation that Ms. Ebo had already provided to Wells Fargo several times previously.

64. In sum, Ms. Ebo was highly qualified to receive a mortgage loan from Wells Fargo, and complied with all of Wells Fargo's reasonable requests for documentation to substantiate her qualifications. Yet, as of March 22, 2022—nearly a month after the loan approval process should have concluded—Ms. Ebo still had not received final approval for her loan.

65. On or about March 22, 2022, the seller of the Property canceled the Contract due to the fact that Wells Fargo had still not approved Ms. Ebo's Loan, and it was unclear when (or if) that approval would ever come. That same day, Ms. Ebo

1 informed Wells Fargo of the seller’s decision. Accordingly, Ms. Ebo did not, and  
2 will never, receive the loan.

3 Terah Kuykendall-Montoya

4 66. Plaintiff Terah Kuykendall-Montoya is a Latino/Hispanic American  
5 and thus is a member of a protected class.

6 67. Ms. Kuykendall-Montoya, with her husband, applied to Wells Fargo  
7 for a mortgage loan in or about late June/early July 2021 to refinance their existing  
8 Wells Fargo mortgage loan (made in 2014 with a remaining balance of  
9 approximately \$86,000) to obtain some additional cash (about \$30,000 from their  
10 equity in order to make some home repairs). At the time, her house was valued at  
11 approximately \$175,000, a value later determined by a subsequent appraisal.

12 68. When she completed the mortgage refinance application with Wells  
13 Fargo, her FICO score as reported through Equifax substantially exceeded the  
14 minimum 620 needed to obtain a conventional mortgage loan, and the family had  
15 more than adequate income to repay the increased loan amount.

16 69. In late July 2021, Wells Fargo denied Ms. Kuykendall-Montoya’s  
17 refinance application on a pretextual basis. Thereafter, in mid-August 2021, she  
18 obtained a mortgage prequalification with another lender. That mortgage was later  
19 approved and closed, repaying her prior Wells Fargo mortgage.

20 Wells Fargo Entities

21 70. Defendant Wells Fargo Bank, N.A. is a nationally chartered bank  
22 with its principal place of business located in San Francisco, California, and is  
23 chartered in Wilmington, Delaware. It has 19,234 employees across all its locations,  
24 including several in the Northern District of California, and generates nearly \$70  
25 billion in sales annually.

26 71. Defendant Wells Fargo Home Mortgage, Inc. is a home lending  
27 company that is part of the “Wells Fargo banking family.” It operates about 725  
28 mortgage stores nationally and originates and services one-to-four-family residential

1 first and junior-lien mortgages and home equity loans. On average, it originates  
2 approximately \$300 billion of loans per year. It is incorporated in the State of  
3 Delaware, and has its principal place of business in Des Moines, Iowa. Wells Fargo  
4 Home Mortgage, Inc. originates loans to California customers from its California  
5 office locations.

6 72. Defendant Wells Fargo & Co. is a nationwide, diversified financial  
7 holding company and bank holding company incorporated in the State of Delaware  
8 with its principal place of business in San Francisco, California. Wells Fargo  
9 provides banking, insurance, investment, and mortgage and consumer finance  
10 services through storefronts, the Internet, and other distribution channels across the  
11 United States and internationally. It is the parent company of Wells Fargo Bank,  
12 N.A.

#### 13 IV. FACTUAL ALLEGATIONS

##### 14 A. The History of Discrimination, Including in Housing

15 73. This country has a shameful history of racial discrimination, of which  
16 housing discrimination has always been a central and profoundly damaging part.

17 74. In 1924, the National Association of Realtors Code of Ethics  
18 mandated that a realtor should “never be instrumental in introducing into a  
19 neighborhood members of any race whose presence will be clearly detrimental to  
20 any property values in the neighborhood.”<sup>21</sup> In other words, realtors were instructed  
21 that it was unethical to integrate neighborhoods. This had a particularly pernicious  
22 effect on Black, Latino and Asian American communities.

23 75. Pursuant to this policy and so many others like it, realtors and  
24 developers would routinely preserve specific properties for white Americans while  
25 designating properties in other areas for non-white Americans. These designations  
26 would be found in rules, restrictions, and covenants attached to the properties.

27 \_\_\_\_\_  
28 <sup>21</sup> <https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history>.

76. Legislation introduced during the New Deal purporting to help homeowners nationwide, in fact, codified racism into housing. The Home Owners' Loan Corporation and the Federal Housing Administration graded residential areas from "A-D," with "A" being the most likely to receive federal loan insurance and "D" being the least likely. Areas with "Colored" and "Oriental" people were automatically given "D" ratings.<sup>22</sup>

77. Federal Housing Administration underwriting manuals issued in 1938 sought to prevent the "infiltration of inharmonious racial groups" and directed underwriters to refuse to insure mortgages that would lead to "a change in social or racial occupancy."<sup>23</sup>

78. "Today many of the nation's largest historically segregated black neighborhoods, such as those in the South Bronx and South Central Los Angeles, remain severely disadvantaged and have become majority-Latino, making Latinos also vulnerable to the adverse consequences of segregated spaces."<sup>24</sup> And Los Angeles County has the dubious distinction of having provided the template for redlining and racially restrictive covenants with respect to Blacks and Latinos across the country.<sup>25</sup> Such practices continue to this day but in a more pernicious and discreet form—through algorithms that can be blamed for discriminatory lending.<sup>26</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> <https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history>.

<sup>24</sup> Justin P. Steil et al., THE SOC. STRUCTURE OF MORTG. DISCRIMINATION (Aug. 9, 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6084476/pdf/nihms978243.pdf>.

<sup>25</sup> Gene Slater, *Op-Ed: How Los Angeles pioneered the residential segregation that helped divide America*, L.A. TIMES (Sep. 10, 2021), <https://www.latimes.com/opinion/story/2021-09-10/racial-covenants-los-angeles-pioneered> ("No place has played a more central role in the creation of residential segregation than Los Angeles.").

<sup>26</sup> City National Bank avoided marketing and underwriting mortgages in majority Black and Latino neighborhoods in Los Angeles County. *DOJ announces a \$31*

1 At bottom, redlining has equally affected the Black and Latino population in Los  
 2 Angeles County and the country.<sup>27</sup>

3 79. Asian Americans are not immune. Asian Americans have been  
 4 subject to centuries of discrimination, starting with the Page Exclusion Act of 1875,  
 5 the Chinese Exclusion Act of 1882, and Executive Order 9066.

6 80. The California Alien Land Law of 1913 (also known as the Webb–  
 7 Haney Act) prohibited “aliens ineligible for citizenship” from owning agricultural  
 8 land or holding long-term leases for it. As a result, many California farmers of  
 9 Asian descent were forced to relinquish their farms and move elsewhere.

10 81. In Oakland, racialized zoning and restrictive covenants directed 80%  
 11 of the city’s Black population to West Oakland following World War II.<sup>28</sup>  
 12 Redlining made it impossible for these residents to obtain loans to improve their  
 13 properties. Instead of helping, the city eventually, in the 1960s, demolished large  
 14 swaths of West Oakland, purportedly to build new homes, but the replacement  
 15 projects languished and most residents were simply forced out with nowhere to go.<sup>29</sup>

16 82. Similarly, title reports for San Francisco area homes built in the 1930s  
 17 \_\_\_\_\_  
 18 *million redlining settlement with LA-based City National Bank*, NPR (Jan. 12, 2023,  
 19 2:03 p.m.), [https://www.npr.org/2023/01/12/1148751006/redlining-city-national-](https://www.npr.org/2023/01/12/1148751006/redlining-city-national-bank-doj-settlement)  
 20 [bank-doj-settlement](https://www.npr.org/2023/01/12/1148751006/redlining-city-national-bank-doj-settlement). The CFPB is not only focused on weeding out explicit forms  
 21 of redlining “but also cases where computer algorithms may cause banks to  
 22 discriminate against Black and Latino borrowers.” *Id.*

23 <sup>27</sup> Manal J. Aboelata, MPH, *Policy Briefing: Healing LA Neighborhoods*, available  
 24 at  
 25 [https://www.preventioninstitute.org/sites/default/files/publications/Healing%20Los](https://www.preventioninstitute.org/sites/default/files/publications/Healing%20Los%20Angeles%20Neighborhoods%20Policy%20Brief%20February%202019%20%28002%29.pdf)  
 26 [%20Angeles%20Neighborhoods%20Policy%20Brief%20February%202019%20%28002%29.pdf](https://www.preventioninstitute.org/sites/default/files/publications/Healing%20Los%20Angeles%20Neighborhoods%20Policy%20Brief%20February%202019%20%28002%29.pdf) (last visited Mar. 2, 2023) (“[R]edlining and the lending practices that  
 27 followed denied goods and services to entire neighborhoods and swaths of cities,  
 28 predominantly those inhabited by African Americans, Latinos, and other so-called  
 ‘undesirable’ people.”).

<sup>28</sup> [https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-](https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history)  
 history.

<sup>29</sup> *Id.*

1 list restrictions that “no person of any other race other than the Caucasian or white  
 2 race” may own or occupy the property, except for “domestic servants of a different  
 3 race domiciled with the homeowner or tenant.”<sup>30</sup> Similar provisions would often  
 4 prohibit ownership or occupancy by residents of “African, Mongolian, or Japanese”  
 5 descent.<sup>31</sup>

6 83. The pervasive discrimination against non-white homeowners and  
 7 those wishing to become homeowners sadly persists to this day, and Wells Fargo’s  
 8 treatment of non-white home loan applicants during the recent mortgage boom is  
 9 just the latest setback for these long-maligned citizens.

#### 10 **B. Wells Fargo Has an Established History of Discrimination**

11 84. Wells Fargo’s discriminatory behavior described herein is completely  
 12 in line with Wells Fargo’s history of discrimination in lending. Indeed, the genesis  
 13 of its latest discriminatory practices seems to have followed the end of the policies it  
 14 put in place after an earlier series of lawsuits.

15 85. In 2012, Wells Fargo agreed to pay \$184 million to settle claims with  
 16 the U.S. Department of Justice that the bank pushed Black and Hispanic  
 17 homeowners to obtain subprime mortgages and then charged them higher fees and  
 18 interest rates.<sup>32</sup>

19 86. In 2015, the City of Oakland sued Wells Fargo over its racially  
 20 discriminatory banking practices in seeking to originate mortgage loans on  
 21 predatory terms in minority neighborhoods and then “subsequent[ly] [refusing] to  
 22 extend credit to minority borrowers seeking to refinance previously issued

23 \_\_\_\_\_  
 24 <sup>30</sup> <https://www.mercurynews.com/2019/02/26/for-whites-only-shocking-language-found-in-property-docs-throughout-bay-area/>.

25 <sup>31</sup> *Id.*

26 <sup>32</sup> <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief>.

unnecessarily expensive loans.”<sup>33</sup> And “when a minority borrower who previously received a predatory loan sought to refinance the loan,” they “discover[ed] that Wells Fargo refused to extend credit at all, or on equal terms as refinancing similar loans issued to [w]hite borrowers.”<sup>34</sup> Even when refinancing applications were approved, the loans turned from a “fixed-rate loan into an adjustable-rate loan that the lender knows the borrower cannot afford should interest rates rise ... [and] the likely result of such practices is to cause homeowners who are otherwise...comfortably making payments on a modest existing mortgage, to be unable to make payment on a new, unaffordable loan.”<sup>35</sup>

87. The City of Oakland also performed a decade-long regression analysis of Wells Fargo loans in Oakland, which controlled for objective variables like “credit history, loan to value ratio, and the ratio of loan amount to income.” The City of Oakland found that, controlling for these factors, “an African-American borrower is 2.583 times more likely to result in foreclosure than a more favorable and less expensive loan issued to a [W]hite borrower in Oakland.”<sup>36</sup> This corroborated other national studies finding that Black American borrowers were “124% more likely to receive a subprime refinance loan” than their White counterparts.<sup>37</sup>

88. Moreover, the City of Oakland alleged that Wells Fargo employed systematic policies like “giving loan officers and others responsible for mortgage lending large financial incentives to issue loans to African-Americans and Hispanics that are costlier than better loans for which they qualify” and “failing to monitor” for racial disparities after “Wells Fargo had notice of widespread product placement

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<sup>33</sup> *City of Oakland v. Wells Fargo Bank, N.A.*, 3:15-cv-04321, Dkt. No. 1, at 2 (N.D. Cal. Sept. 21, 2015).

<sup>34</sup> *Id.* at 4.

<sup>35</sup> *Id.* at 20.

<sup>36</sup> *Id.* at 20-21.

<sup>37</sup> *Id.* at 15.

disparities based on race and national origin.”<sup>38</sup> Wells Fargo also systematically “fail[ed] to underwrite loans based on traditional underwriting criteria such as debt-to-income ratio, loan-to-value ratio, FICO score, and work history.”<sup>39</sup> This led District Judge Edward M. Chen to conclude that “Oakland has identified specific employment practices in addition to the mere delegation of discretion.”<sup>40</sup>

89. The City of Oakland is not the only municipality that has sought to hold Wells Fargo accountable for its discriminatory conduct. Cook County (Chicago) sued Wells Fargo for predatory lending practices that stripped minority homeowners of their home equity.<sup>41</sup> “Publicly available loan origination data indicates that the percentage of high-cost and other nonprime loans issued by Wells Fargo in Cook County to minority borrowers well exceeded the County’s percentage of minority home owners—typically by a factor of two to three.”<sup>42</sup> And the disproportionately White employees at Wells Fargo were given “discretion to steer prime-eligible minority borrowers into nonprime loans.”<sup>43</sup> “Wells Fargo subjected minority borrowers to equity stripping to a greater extent than it did nonminority borrowers with similar credit histories.”<sup>44</sup> And “minority borrowers were particularly susceptible to Wells Fargo’s predatory practices because they were more likely than nonminority borrowers to lack access to low-cost credit, relationships with banks and other traditional depository institutions, and adequate comparative financial information.”<sup>45</sup>

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<sup>38</sup> *Id.* at 33.

<sup>39</sup> *Id.* at 9.

<sup>40</sup> *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-CV-04321-EMC, 2018 WL 3008538, at \*15 (N.D. Cal. June 15, 2018), *aff’d in part, rev’d in part on other grounds City of Oakland v. Wells Fargo & Co.*, 14 F.4th 1030 (9th Cir. 2021).

<sup>41</sup> *Cty. of Cook, Illinois v. Wells Fargo & Co.*, 14-C-9548-GF (N.D. Ill.).

<sup>42</sup> *Cty. of Cook, Illinois v. Wells Fargo & Co.*, 314 F. Supp. 3d 975, 980 (N.D. Ill. 2018).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

1           90. In 2019, Wells Fargo settled a lawsuit by the City of Philadelphia  
2 alleging that it purposefully made it difficult for minorities to refinance their  
3 mortgages.<sup>46</sup> The court in that case identified seven Wells Fargo policies that  
4 contributed to the discrimination against minorities: (1) knowing about lending  
5 practices that either created higher-risk and higher-cost loans to minorities compared  
6 to comparably credit-situated white borrowers or failing to adequately monitor the  
7 bank's practices regarding mortgage loans, including but not limited to originations,  
8 marketing, sales, and risk management; (2) failing to underwrite loans based on  
9 traditional underwriting criteria such as debt-to-income ratio, loan-to-value ratio,  
10 FICO score, and work history; (3) failing to prudently underwrite hybrid adjustable-  
11 rate mortgages ("ARMs"), such as 2/28s and 3/27s; (4) failing to prudently  
12 underwrite refinancing loans, thereby substituting unaffordable mortgage loans for  
13 existing mortgages that borrowers were well-suited for and that allowed them to  
14 build equity; (5) failing to monitor and implement necessary procedures within its  
15 Internal Audit, Corporate Risk, Human Resources, Law Department, and Board of  
16 Directors throughout the Community Banking segment, which includes the retail  
17 mortgage banking business responsible for the unlawful activities set forth herein, to  
18 ensure compliance with federal fair lending laws; (6) failing to abide by its own  
19 "Vision & Values," which purportedly guides its business practices and  
20 relationships with customers; and (7) failing to ensure that its decentralized  
21 organizational structure was capable of properly monitoring mortgage lending  
22 activities within Community Banking.

### 23 **C. Historically Low Interest Rates Prevail**

24           91. Before the Federal Reserve's recent series of rate hikes, interest rates  
25 were near an all-time low in the United States, and prospective home buyers sought  
26 favorable purchase money mortgages, and homeowners who held mortgage loans at

27 <sup>46</sup> [https://www.phila.gov/2019-12-16-city-of-philadelphia-and-wells-fargo-resolve-](https://www.phila.gov/2019-12-16-city-of-philadelphia-and-wells-fargo-resolve-litigation/)  
28 [litigation/](https://www.phila.gov/2019-12-16-city-of-philadelphia-and-wells-fargo-resolve-litigation/).

1 higher rates (meaning a great number of homeowners) sought to refinance their  
2 loans at lower rates. Purchasing a home during this time period allowed new  
3 homeowners to pay very low monthly payments in relation to the value of their  
4 home. Obtaining a refinance during this time allowed homeowners to significantly  
5 reduce their monthly payments and to owe less mortgage interest over the life of the  
6 loan.

7 92. The same low interest rates spurred dramatic increases in applications  
8 for original purchase mortgage loans, resulting in similarly substantial disparities in  
9 the proportion of non-white applicants who were denied loans or otherwise offered  
10 substantially worse terms.

#### 11 **D. Wells Fargo's Home Loan Application Process**

##### 12 Part 1: Gathering of Key Geographic, Financial and Demographic Data and 13 Submission of Form 1003 Through "Blend"

14 93. On November 27, 2017, as part of its explicit policy to "leverage the  
15 ideas in Silicon Valley and beyond" in mortgage underwriting, then-Wells Fargo  
16 CEO Tim Sloan announced the bank's partnership with San Francisco startup Blend  
17 Labs to develop a new online mortgage application and related tools.

18 94. Wells Fargo's idea of "leverag[ing] the ideas in Silicon Valley"  
19 involves, first, obtaining a prospective refinance applicant's personal information,  
20 including name, phone number, email address, and the last four digits of the  
21 prospective applicant's Social Security number. Applicants are, thus, required to  
22 have and utilize email to participate in the process, including checking Wells  
23 Fargo's loan tracker system for updates and requests for additional information.  
24 When, during the pandemic, visiting loan officers in person became infeasible,  
25 applicants without technical sophistication were disadvantaged.

26 95. At this preliminary stage, Wells Fargo's algorithm obtains the first  
27 data points that are subsequently utilized in its discriminatory decisions: names,  
28 phone numbers (including area codes), email addresses and Social Security numbers

1 that can then be tied to other data and used in other formulae within Wells Fargo's  
2 systems.

3       96.       Next, Wells Fargo sends the applicant, via electronic mail, a  
4 dedicated link through Blend, the digital banking platform developed by Wells  
5 Fargo in conjunction with Blend Labs. That link enables the applicant to complete a  
6 Uniform Residential Loan Application (Form 1003) and submit that application to  
7 Wells Fargo.

8       97.       It is here that Wells Fargo collects more information for its lending  
9 algorithm. The information collected on this form includes the borrower's name,  
10 alternate names, Social Security number, date of birth, citizenship status, names of  
11 co-borrowers, marital status, number and ages of dependents, home, mobile and  
12 work phone numbers, the subject property address, property value, status of  
13 property, intended occupancy and monthly expenses, former addresses, mailing  
14 addresses, employment information, income information, asset information,  
15 liabilities and expenses, and military service.

16       98.       Next, a Wells Fargo loan officer conducts a follow-up telephone or  
17 in-person interview with the applicant to obtain additional information that cannot  
18 be submitted online, including the financial acknowledgment form and the  
19 Demographic Information Addendum, which specifically asks about ethnicity, race,  
20 and gender.

21       99.       Here, Wells Fargo's process places particular emphasis on race. If  
22 the interview is conducted in person, the loan officer must visually observe the  
23 applicant and consider the applicant's surname in an effort to determine the  
24 applicant's race. Here, too, Wells Fargo's algorithm receives key demographic and  
25 financial data that it then utilizes in its lending decisions.

## Part 2: Running “Blend” Data Through Automated CORE “Pioneering Underwriting System” Systematically Infected with Racially Biased Algorithms and Overlays

100. Having obtained all of the geographic, demographic, and other data necessary through Blend and the submission of the Form 1003, the Wells Fargo loan originator does the equivalent of pressing “send,” submitting the Form 1003 to Wells Fargo’s CORE automated underwriting system for a decision. Former non-control group employees of Wells Fargo with knowledge of these systems recount that, after operating as described herein—running both Desktop Underwriter (“DU”) and Loan Prospector (“LP”) simultaneously—CORE’s decision would come back as A1 or A2, meaning the loan was approved; C1, meaning the loan had to go through a manual underwriting process; or C2, meaning the applicant was deemed “not loanable” and the application was denied. During the COVID-19 era, Black refinance applicants were systematically slotted by CORE into the C1 and C2 categories.

101. The idea of something that operates generally like CORE is, of course, nothing new or unique. Used properly, automated underwriting systems can evaluate the risk profile of a loan and recommend its approval or denial with respect to race-neutral criteria to human underwriters and loan processors who can, on average, comfortably handle 30 files per month, who are specially trained in the bank's fair lending compliance programs and procedures, and who can ensure that the guidelines and mechanics of the algorithm are operating in accordance with these requirements.

102. But the consequences can be immediate and pernicious when CORE-like systems are programmed with racial overlays and are otherwise not properly used or supervised by employees with training in fair lending practices. The director of the Consumer Financial Protection Bureau (the “CFPB”) describes these

1 types of banking algorithms as “black boxes behind brick walls.”<sup>47</sup> “When  
 2 consumers and regulators do not know how decisions are made by the algorithms,  
 3 consumers are unable to participate in a fair and competitive market free from  
 4 bias.”<sup>48</sup>

5 103. This was certainly the case at Wells Fargo. As recognized by a group  
 6 of United States Senators, the operations and impact of Wells Fargo’s CORE  
 7 automated underwriting system are both new and unique in their treatment of Black  
 8 applicants. The chairman of the Senate Finance Committee, who wanted to  
 9 investigate the bank for “potentially illegal discrimination,” demanded that the bank  
 10 produce to the Committee the data and algorithms it uses to evaluate applicants.<sup>49</sup>

11 104. Matters became worse at Wells Fargo when its understaffed  
 12 underwriting departments made a series of deliberate and intentional choices to  
 13 centralize lending decisions. These decisions, some of which were ostensibly made  
 14 to facilitate working from home, took human supervision and fair-lending  
 15 compliance out of the process. Seemingly trumpeting the effect of these decisions,  
 16 Wells Fargo went so far as to make an internal announcement that it would place  
 17 increasing and undue reliance on machine learning processes in an automated  
 18 underwriting system. But that system was increasingly infected with explicit and  
 19 implicit racial signals (so-called “overlays”) that had, as their proximate and likely  
 20 result, the disparate impact reflected in the statistical analyses set forth in this  
 21 Amended Complaint during the time periods at issue herein.

22 105. These Wells Fargo-specific overlays are manifestations of the same

23 \_\_\_\_\_  
 24 <sup>47</sup> <https://www.consumerfinance.gov/about-us/newsroom/remarks-of-director-rohit-chopra-at-a-joint-doj-cfpb-and-occ-press-conference-on-the-trustmark-national-bank-enforcement-action/>.

25 <sup>48</sup> *Id.*

26 <sup>49</sup> *Wells Fargo Pressed by Senators on Race Disparity in Refinancing*, Yahoo!  
 27 Finance, accessible at: <https://finance.yahoo.com/news/wells-fargo-pressed-senators-race-171439115.html>.  
 28

1 unbroken history of business policies and practices that create an “artificial,  
2 arbitrary, and unnecessary” barrier to fair-housing opportunities for non-white home  
3 purchasers and owners. These include, among others:

4       106. ***Geographic Indicators.*** Among the overlays utilized by Wells  
5 Fargo’s CORE automated underwriting processes are geographic indicators, the  
6 effect of which is modern-day redlining. Borrowers seeking to refinance properties  
7 in Black-majority neighborhoods are deemed by the algorithm to be more of a  
8 lending risk than similarly situated white borrowers seeking to refinance property in  
9 non-Black-majority neighborhoods. Wells Fargo’s algorithm effectuates this racial  
10 signaling by comparing address data provided in the borrower’s Form 1003 to low  
11 and moderate income census tract data within Wells Fargo’s internal systems,  
12 identifying borrowers with property in Black-majority neighborhoods as more of a  
13 lending risk than borrowers with property in white-majority neighborhoods. None  
14 of this is required by legitimate, race-neutral underwriting criteria.

15       107. ***Post-Close Liquidity Requirements.*** Another overlay utilized by  
16 Wells Fargo’s underwriting system are racially discriminatory requirements for  
17 post-close liquidity and severe restrictions on the sources of that liquidity. Before  
18 March 2020—and consistent with Fannie Mae and Freddie Mac underwriting  
19 guidelines—Wells Fargo generally required borrowers to be able to show 12 months  
20 of post-close reserves in order to close their loans. When COVID-19 hit, however,  
21 Wells Fargo programmed its system to only approve borrowers who could show 18  
22 months of post-close liquidity for W-2 wage earners, and 24 months for self-  
23 employed K-1 borrowers. Wells Fargo further changed the definition of post-close  
24 liquidity to allow only 50% of the post-close liquidity to come from retirement  
25 accounts—often the greatest source of liquidity for borrowers.

26       108. Not only was this huge increase not required by legitimate, race-  
27 neutral underwriting criteria, but it was a change that Wells Fargo knew would have  
28 a racially disparate impact. For example, an April 2020 JP Morgan Chase Institute

report found that for every dollar in liquid assets held by White Americans, Black Americans held 32 cents.<sup>50</sup> While Black families have, on average, \$2,000 or less in liquid savings, the typical White family has more than four times that amount.<sup>51</sup>

109. ***Demographic Indicators.*** Another criteria utilized by Wells Fargo is, indeed, race itself. For example, Wells Fargo’s automated underwriting processes use Bayesian Improved Surname Geocoding (“BISG”),<sup>52</sup> a method that applies Bayes’ Rule to predict the race or ethnicity of an individual utilizing the individual’s surname and geocoded location, when that information is not otherwise provided. This process, which necessitates an internal determination by the Wells Fargo algorithm of which neighborhoods are associated with which racial group, works as follows.<sup>53</sup>

(i) first, by calculating the prior probability of an individual –  $i$  – being of a certain racial group  $r$  given their surname:

$$Pr(R_i = r | S_i = s)$$

(ii) next, by updating that probability with the probability of the individual  $i$  living in a geographic location  $g$  that is associated with a particular racial group  $r$ :

$$Pr(G_i = g | R_i = r)$$

(iii) and finally, by using Bayes’ Theorem to determine the probability that a particular borrower actually belongs to a particular racial or ethnic group.

$$Pr(R_i = r | S_i = s, G_i = g) = \frac{Pr(G_i = g | R_i = r) Pr(R_i = r | S_i = s)}{\sum_{i=1}^n Pr(G_i = g | R_i = r) Pr(R_i = r | S_i = s)}$$

<sup>50</sup> <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-race-report.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> <https://ww2.amstat.org/meetings/sdss/2020/onlineprogram/ViewPresentation.cfm?file=309619.pdf>.

<sup>53</sup> <https://cran.r-project.org/web/packages/eiCompare/vignettes/bisg.html>.

110. By utilizing BISG in its automated underwriting processes, Wells Fargo's formulae utilize demographic criteria, including race, "imputed from databases of names and addresses" that associate neighborhoods with races to supplement Form 1003's race disclosures and assist in the overall racial assessment that allows the algorithm, improperly, to rely on race in the risk determination process.

111. ***Uncorrected and Racially Biased Appraisals.*** Wells Fargo also considers uncorrected historical and current appraisal data from geographically differentiated locations in its refinance evaluation process. Race-stratified differentials in appraisal data are well known to Wells Fargo and others in the banking industry. Indeed, according to a March 23, 2022 report in *The Washington Post* citing Brookings Institution data, "homes in Black neighborhoods" (which, as already discussed, Wells Fargo identifies) routinely appraise at "23 percent less, on average, than those in comparable White neighborhoods – despite having similar neighborhood and property characteristics and amenities."<sup>54</sup> Freddie Mac has similarly "found that 12.5 percent of appraisals for home purchases in Black neighborhoods and 15.4 percent in Latino neighborhoods came in below the contract price, compared with 7.4 percent of appraisals in white neighborhoods."<sup>55</sup> The below-market appraisals intentionally skew the loan-to-value calculations against Black homeowners and prospective homeowners and serve as a tool for racial discrimination.

112. Wells Fargo's automated underwriting system does not correct appropriately for these racial disparities in appraisals, and instead places undue reliance on an uncorrected data point that systematically undervalues properties in neighborhoods populated by non-white homeowners. Wells Fargo's failure to

<sup>54</sup> <https://www.washingtonpost.com/business/2022/03/23/home-appraisal-racial-bias/>.

<sup>55</sup> *Id.*

1 correct for this well-known disparity in property values is not acceptable based on  
2 any legitimate underwriting criteria.

3 113. ***Unjustified Increased FICO Requirements.*** Another algorithmic  
4 overlay utilized by the Wells Fargo CORE system is increased credit score  
5 requirements. On information and belief, Wells Fargo imposed a higher minimum  
6 credit score than that required for an FHA loan or a Fannie Mae-backed loan.  
7 Accordingly, if Fannie Mae required a minimum credit score of 600, Wells Fargo  
8 would require a minimum score of 620. The racial impact of this change, which  
9 was not justified by legitimate underwriting criteria, is clear. In February 2021, it  
10 was reported that one in five Black consumers have FICO scores below 620, while  
11 one out of every 19 White consumers are in the sub-620 category.<sup>56</sup>

12 114. A study by the Board of Governors of the Federal Reserve System  
13 analyzing federal mortgage data identified no “evidence [a]s to whether these tighter  
14 standards reduce loan risk to justify the disparate impact on minority denials they  
15 are associated with.”<sup>57</sup> And after controlling for relevant underwriting factors (debt-  
16 to-income ratios, loan-to-value ratios, credit scores, etc.) the study found that  
17 “[l]enders who impose the strictest standards on their white applicants [like Wells  
18 Fargo] tend to have the largest unexplained excess denials of minority applicants,”  
19 including Black applicants.<sup>58</sup>

## 20 **E. Awareness of Racial Bias Infecting Residential Lending Algorithms**

21 115. In 2021, six Wells Fargo employees and officers with doctorate  
22 degrees published a study warning about the dangers of banking algorithms used by

23 <sup>56</sup> <https://www.forbes.com/advisor/credit-cards/from-inherent-racial-bias-to-incorrect-data-the-problems-with-current-credit-scoring-models/>.

24 <sup>57</sup> *How Much Does Racial Bias Affect Mortgage Lending? Evidence from Human*  
25 *and Algorithmic Credit Decisions*, Neil Bhutta, Aurel Hizmo, and Daniel Ringo  
26 (July 2021), at 12, n.20, available at: [https://papers.ssrn.com/sol3/papers.cfm?](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887663)  
27 [abstract\\_id=3887663](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3887663).

28 <sup>58</sup> *Id.* at 12.

Wells Fargo and its peers. The study was published on arXiv, an open-access Cornell University archive of scholarly articles in the fields of computer science, quantitative finance, statistics, and economics, among others.<sup>59</sup>

116. The authors of the study noted that “despite ‘years of intense scrutiny, lending discrimination still persist[s]’” and that the arrival of flexible and automated AI/ML [artificial intelligence/machine learning] algorithms and “the availability of alternative sources of data are... exacerbating” this discrimination.<sup>60</sup>

117. The potential sources of bias and discrimination are multifold. According to the study, historical data can often be skewed against specific groups, particularly where information on a protected group is limited.<sup>61</sup> Moreover, biases in historical data can be exacerbated with the use of machine learning because algorithms, which automate feature engineering, can ignore the presence of surrogate variables for protected attributes.<sup>62</sup>

118. In addition to data bias, the automated nature of machine learning algorithms “miss[es] the potential for correlated surrogate variables causing proxy discrimination.”<sup>63</sup> “Data bias together with poor optimization of algorithms can cause severe harm to protected groups.”<sup>64</sup>

119. Notably, the study concludes that the use of “black-box algorithms that are not well-understood” have “potential for serious harm” in the consumer lending space, and thus the models “must be continually monitored for disparate

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<sup>59</sup> <https://arxiv.org/>.

<sup>60</sup> *Bias, Fairness, and Accountability with AI and ML Algorithms*, Nengfeng Zhou, Zach Zhang, Vijayan N. Nair, Harsh Singhal, Jie Chen, and Agus Sudjianto, Corporate Model Risk, Wells Fargo (May 6, 2021), available at: <https://arxiv.org/ftp/arxiv/papers/2105/2105.06558.pdf>, at page 4.

<sup>61</sup> *Id.* at 5.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 6.

<sup>64</sup> *Id.* at 7.

1 impact testing.”<sup>65</sup> A “[s]eparate fair lending group conducts periodic backtesting  
 2 and trend analysis to validate that credit underwriting systems do not discriminate  
 3 against applicants on a prohibited basis.”<sup>66</sup>

4 **F. Wells Fargo’s COVID-19 Era Understaffing and Failure to Correct for**  
 5 **Discriminatory Automated Lending Decisions**

6 120. Wells Fargo is no doubt well aware that properly functioning banks,  
 7 including its competitors, correct for biases within automated underwriting  
 8 processes by employing trained underwriters and fair lending teams that are  
 9 supposed to prevent the racially pernicious consequences that can arise from the  
 10 unrestrained functioning of automated processes, which, if left unchecked, can  
 11 systematically identify minority borrowers as undue credit risks.

12 121. But Wells Fargo did not do this. Instead, Wells Fargo made a  
 13 business decision to centralize and emphasize automated processes at the expense of  
 14 individualized lending decisions. Wells Fargo’s loan originators, processors, and  
 15 underwriters were overworked—sometimes handling as many as *three times* the  
 16 normal monthly volume expected of loan processors and underwriters—and  
 17 systematically disincentivized to “check the work” of the CORE system. Other  
 18 changes were also made, such as to remove the ability of staff to make changes  
 19 within Wells Fargo’s automated system that would result in a greater likelihood of  
 20 an application being approved.

21 122. Given the racially signaled functioning of Wells Fargo’s algorithm,  
 22 the effect of this was clear: nobody was available to provide a check on the racially  
 23 biased lending decisions taking place at Wells Fargo, which resulted in delays,  
 24 denials, and the systematic application of higher interest rates to non-white  
 25 borrowers to an extent that, in many cases, far exceeded anything in the industry.

26 <sup>65</sup> *Id.* at 13.

27 <sup>66</sup> <https://ww2.amstat.org/meetings/sdss/2020/onlineprogram/ViewPresentation.cfm?file=309619.pdf>.  
 28

**G. Wells Fargo's Knowledge of the Disparate Impact on Racial and Ethnic Minorities**

123. Not providing a human check on its lending practices did not, however, mean that Wells Fargo was unaware of the discriminatory impact of its practices. On the contrary, senior Wells Fargo executives were fully aware of their disparate impact.

124. For example, throughout the relevant time period, Wells Fargo generated a "Diversity Market Segments Report" that was distributed companywide via electronic mail distribution on a monthly basis. Comprised of Wells Fargo's nationwide lending statistics, the report included, among other things, the racial breakdown of Wells Fargo's lending, the percentage of loans being made in certain locations and by certain originators and offices, whether Wells Fargo met the Community Reinvestment Act<sup>67</sup> requirements, and the percentage of loans that were made to first-time homebuyers. These reports were reviewed and discussed during monthly regional calls in which employees were congratulated on their efforts as reflected therein.

125. Despite these monthly reports providing a real-time exposé of the significant adverse effect of its overlays on Black and other non-white applicants, Wells Fargo did nothing.

**H. Wells Fargo's Algorithm Has a Disparate Impact on Minority Homebuyers and Homeowners**

126. The above practices, policies, and procedures are arbitrary and artificial and unnecessary for legitimate underwriting. The vast difference between refinancing approval rates of Wells Fargo for non-white homeowners and

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<sup>67</sup> The Community Reinvestment Act, enacted in 1977, requires the Federal Reserve and other federal banking regulators to encourage financial institutions to help meet the credit needs of the communities in which they do business, including low- and moderate-income neighborhoods.

1 prospective homeowners as compared to any other lending institution's approval  
2 rates negates any possible legitimate objective.

3 127. As noted, the above intentional practices also have a  
4 disproportionately adverse effect on non-white individuals seeking to buy a home or  
5 seeking other home loan products. Persons falling within any one of the ethnic or  
6 racial aggregate categories and subcategories set forth in "Regulation C" (12 C.F.R.  
7 1003), other than "White, Not Hispanic or Latino" are members of a protected class.

8 128. Wells Fargo's practices directly harmed prospective homeowners  
9 within the Class by preventing them from obtaining favorable loan terms in order to  
10 buy a home at prevailing market rates, causing them to either accept higher rates  
11 throughout their mortgage, or fail to obtain a mortgage from Wells Fargo altogether.

12 129. Wells Fargo's practices directly harmed existing homeowners within  
13 the Class by forcing them to pay higher interest rates while applications were  
14 pending, by forcing them to pay higher interest rates when applications were  
15 completed, and/or by denying refinancing and other home loan applications. In the  
16 absence of these policies, these homeowners would not have had to pay higher rates  
17 or face rejection of their refinancing applications.

18 130. The disparity between Wells Fargo's treatment of white homeowner  
19 and prospective homeowner applicants and non-white homeowner and prospective  
20 homeowner applicants is significant and, in some respects, shocking.

21 131. In 2020, for instance, Wells Fargo approved approximately 67.1% of  
22 white borrowers who applied for a mortgage, compared to only 51.8% of Black  
23 and/or African American applicants.

24 132. HMDA data discloses that Wells Fargo ***denied over 50%*** of the Black  
25 homeowners seeking to refinance in 2020, and ***denied just under 50%*** of the Black  
26 homeowners seeking to refinance in 2021. No other major lending institution  
27 denied the refinancing applications of Black Americans at such stunning rates. The  
28 numbers tell a shameful story for which there is no legitimate business explanation.

133. HMDA data from eight million refinancing applications filed in 2020 reveal that “the highest-income Black applicants [had] an approval rate about the same as white borrowers in the lowest-income bracket.”<sup>68</sup> White refinancing applicants earning between \$0 and \$63,000 a year were *more likely* to have their refinancing application approved by Wells Fargo than Black refinancing applicants earning between \$120,000 and \$168,000 a year.<sup>69</sup>

#### Higher Income, Same Approval

Wells Fargo's refinancing approval rates were higher for the lowest-income White applicants in 2020 than for all but the highest-income Black applicants.



Source: Bloomberg analysis of Home Mortgage Disclosure Act data for 8 million completed applications to refinance conventional loans in 2020.

134. Non-white applicants in supposedly less desirable—or majority-minority—Metropolitan Statistical Areas (“MSAs”) fared worse. For example, in Fulton County, where the population was 43.6% Black in 2020,<sup>70</sup> Wells Fargo approved fewer than 43% of refinancing applications completed by Black

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> <https://data.census.gov/cedsci/table?g=0500000US13121&tid=ACSDP5Y2020.DP05>.

1 homeowners, the lowest approval rate among major lenders.<sup>71</sup> In the  
2 Chicago/Naperville/Evanston/Arlington Heights MSA, Wells Fargo approved and  
3 originated loans for less than 48% of all loan applications completed by Latino and  
4 Hispanic prospective borrowers, compared with an approval and origination rate of  
5 almost 81% for JP Morgan Chase.<sup>72</sup> And in the Los Angeles/Long Beach/Glendale  
6 MSA, Wells Fargo approved and originated loans for less than 68% of loan  
7 applications completed by Asian American prospective borrowers, compared with  
8 an approval and origination rate of over 85% across all other lending institutions.<sup>73</sup>

9 135. These numbers were mirrored in the nationwide data. In 2020, Wells  
10 Fargo approved only **47%** of residential refinance applications submitted by Black  
11 applicants, **53%** of residential refinance applications submitted by applicants  
12 identified as Hispanic and/or Latino, and **67%** of residential refinance applications  
13 submitted by Asian-American applicants, compared with **71%**, **79%**, and **85%**  
14 approval rates across all other lenders.

15 136. And even for those Black applicants whose loans were ultimately  
16 approved, they faced delays that white applicants living in predominately white  
17 neighborhoods did not, causing them damages through continued higher mortgage  
18 rates as they awaited loan approval. In some cases, Wells Fargo officers simply told  
19 Black applicants living in predominately Black neighborhoods that “perhaps the  
20 area is not eligible” for quick evaluations of refinancing applications.<sup>74</sup>

21 137. And because Wells Fargo designed an application process that is  
22 disproportionately difficult for minority homeowners to complete, and because it  
23 engages in a practice of “soft denials,” where loan officers leave applicants hanging  
24 or encourage them to look elsewhere, 27% of all Black homeowners who began a

25 <sup>71</sup> <https://ffiec.cfbp.gov/data-browser/data/2020>

26 <sup>72</sup> *Id.*

27 <sup>73</sup> *Id.*

28 <sup>74</sup> *Id.*

1 refinance application with Wells Fargo withdrew it.<sup>75</sup> On information and belief, if  
2 Black applicants who were unable to complete the mortgage loan process are added  
3 to those who did, Wells Fargo approved less than one-third of the Black Americans  
4 who sought a refinancing loan in 2020.

5 138. In direct contradiction of the data and its hidden practices and  
6 uniform policies, Wells Fargo publicly professes a commitment to diversity and  
7 equality. However, Wells Fargo intentionally and uniformly fails to disclose to  
8 minority applicants that it engages in redlining because Wells Fargo knows this is  
9 material information that would cause minority applicants to seek mortgage and  
10 refinancing loans from its competitors. Wells Fargo collects significant application  
11 fees and appraisal fees as part of each original purchase mortgage loan and  
12 refinancing application, even if the application is ultimately denied. Wells Fargo  
13 does not want to lose this revenue source, which is partly why it intentionally fails to  
14 disclose its redlining practices to minority applicants. Plaintiffs and the Class would  
15 not have agreed to pay these fees had Wells Fargo properly disclosed its redlining  
16 practices.

#### 17 **I. PLAINTIFFS' HARM IS TYPICAL OF THE CLASS**

18 139. The uniformity of Wells Fargo's discriminatory practices in  
19 connection with its algorithm and otherwise means that Plaintiffs' experiences are  
20 emblematic of the experiences of minority Americans all over the country. As  
21 Wells Fargo executive Peter Strawser declared in documents submitted to this  
22 Court, Wells Fargo's underwriters "are in the same organization within Wells  
23 Fargo" and apply "similar policies, processes and procedures to each individual loan  
24 or financing application."<sup>76</sup>

25 140. Shaia Beckwith Simmons is an African American resident of Florida.

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26 <sup>75</sup> *Id.*

27 <sup>76</sup> Declaration of Peter Strawser, *Braxton v. Wells Fargo Bank, N.A.*, No. 4:22-cv-  
28 1748 (N.D. Cal. Aug. 26, 2022) (ECF No. 53-1).

1 Ms. Simmons obtained a home mortgage with Wells Fargo and was subjected to  
2 racial discrimination in Wells Fargo's mortgage lending process.

3 141. Ms. Simmons is a well-qualified African American borrower who  
4 obtained a home mortgage loan from Wells Fargo in 2009 and refinanced it at a  
5 lower interest rate in 2013. Ms. Simmons is a model homeowner who has timely  
6 made her monthly payments without incident.

7 142. During the COVID-19 pandemic, as required by the CARES Act,  
8 Wells Fargo offered existing home mortgage borrowers the option to defer their  
9 payments. Ms. Simmons accepted Wells Fargo's deferment option, which allowed  
10 her to restructure her loan to defer monthly payments during the pandemic and  
11 instead make those monthly payments at the end of her loan.

12 143. After several months of approved deferments, Ms. Simmons promptly  
13 resumed making her mortgage payments in full, as she had done for decades without  
14 issue. Yet, consistent with its nationwide discriminatory practices, Wells Fargo  
15 maliciously and unlawfully instituted foreclosure proceedings against Ms. Simmons  
16 without prior notice, asserting without justification that Ms. Simmons was in default  
17 for failure to make mortgage payments during her deferment.

18 144. Consistent with its nationwide practices of predatory lending to  
19 extract wealth from Black Americans, Wells Fargo presented Ms. Simmons with an  
20 ultimatum: she could renegotiate her loan, potentially at a higher interest rate that  
21 would cost her many thousands of dollars over the remaining life of the loan, or  
22 Wells Fargo would persist with the unjustified foreclosure to take her home away  
23 from her and resell it in a booming market. Ms. Simmons refused to renegotiate her  
24 loan and is resisting the wrongful foreclosure, which remains pending.

25 145. Winfred Thomas is a minority homeowner who owns equity in a  
26 home located in Hogansville, Georgia. In December 2020, Mr. Thomas applied to  
27 Wells Fargo to refinance his Wells Fargo mortgage, and his application was denied  
28 in 2021. Shortly thereafter, Mr. Thomas applied to refinance his Wells Fargo

1 mortgage with Veteran's United Home Loans. Mr. Thomas's application was  
2 approved by Veteran's United Home Loans for an interest rate 3.2% lower than the  
3 5.5% rate he had been paying to Wells Fargo.

4 146. Michelle Sims is a minority homeowner who owns equity in a home  
5 located in Desoto, Texas. In December of 2021, Ms. Sims applied for a Wells Fargo  
6 home refinance and her application was denied in early 2022.

7 147. Alfred Pope is a minority homeowner who owns equity in a home  
8 located in Chesapeake, Virginia. Mr. Pope applied for a Wells Fargo home  
9 refinancing in September of 2021, and his application was denied.

10 148. Chantelle Harris is a minority homeowner who owns equity in a  
11 house located in Somerset, New Jersey. Ms. Harris applied for a Wells Fargo  
12 refinance in July of 2021, and her refinance was denied despite having been a Wells  
13 Fargo customer for more than 10 years with a credit score over 700 and consistent  
14 income.

15 149. Sharita Fanning is Black and a well-qualified home borrower. Indeed,  
16 Fanning has owned her home since 1997 and never missed a mortgage payment.

17 150. In 2021, Ms. Fanning sought to take advantage of the considerable  
18 equity in her home as a long-time Wells Fargo customer. At the time, Ms. Fanning's  
19 home was valued at over \$240,000; her mortgage was less than \$25,000; and she  
20 sought a loan of only \$15,000 for modest home improvements against her home  
21 equity. Wells Fargo told Ms. Fanning instead that she must refinance her home and  
22 more than double her mortgage to approximately \$55,000, and she agreed to do so.  
23 Rather than grant her refinancing application in a timely manner, and pursuant to its  
24 discriminatory practices, Wells Fargo refused to accept Ms. Fanning's application  
25 and demanded more and more information, including information she previously  
26 provided. At least four separate Wells Fargo loan officers contacted Ms. Fanning for  
27 documents she already submitted. Wells Fargo eventually refused to approve her  
28 application, forcing her to start the process all over again. Ms. Fanning applied again

1 and experienced the same tactics; Wells Fargo questioned Ms. Fanning's credibility  
2 and documentation. Only after she was forced to attain counsel did Wells Fargo  
3 finally approve her refinancing, and even then, after extensive delays and on worse  
4 terms because of her race. Wells Fargo has also provided Ms. Fanning with  
5 inaccurate and misleading information and refused to answer basic questions  
6 regarding her loan.

7       151. As a result of Wells Fargo's racially discriminatory lending practices,  
8 Ms. Fanning incurred substantial costs, delays, and inconveniences. Among other  
9 things, she and her son were forced to leave her home for repairs and incur  
10 additional housing and other costs and suffer emotional distress as a result of Wells  
11 Fargo's actions.

12       152. The stories of non-white Americans whose applications were delayed  
13 or denied are legion. Each of these non-white Americans, who are members of the  
14 putative Class, have had experiences that are typical of the Plaintiffs, regardless of  
15 their race and ethnicity. Thus, their claims are all substantially similar and  
16 congruent, regardless of their individual race or ethnicity, such that the Plaintiffs are  
17 qualified to represent their interests as they have claims and interests typical of those  
18 putative Class members.

## 19                                   V. CLASS ALLEGATIONS

20       153. Plaintiffs bring this action on behalf of themselves and a potential  
21 class of similarly situated Wells Fargo residential original purchase mortgage,  
22 refinance and other home mortgage loan applicants falling within any one of the  
23 ethnic or racial aggregate categories and subcategories set forth in "Regulation C"  
24 (12 C.F.R. 1003), other than "White, Not Hispanic or Latino" (hereinafter,  
25 "Minority Applicants").

26       154. Each and every claim alleged in this case is also alleged on behalf of  
27 every member of the Class.

1     **A.     Class Definition**

2           155.     The Class includes all Minority Applicants in the United States who,  
3 from January 1, 2018 through the present (the “Class Period”), submitted an  
4 application for a original purchase or other home mortgage loan or to refinance or  
5 modify a home mortgage loan through Defendants that was (i) denied; (ii) approved  
6 at higher interest rates or subject to less favorable terms as compared to similarly  
7 situated non-Minority Applicants; or (iii) processed at a rate slower than the average  
8 processing time of applications submitted by similarly situated non-Minority  
9 Applicants. Excluded from the Class are (a) Defendants and their employees,  
10 affiliates, parents, subsidiaries, and co-conspirators, whether or not named in this  
11 Complaint, (b) counsel representing Plaintiffs and their staff, and (c) any judicial  
12 officers assigned to this case and their staff.

13           156.     Class certification is authorized under Federal Rule of Civil  
14 Procedure 23 and applies to claims for injunctive and equitable relief, including  
15 restitution, under Rule 23(b)(2), for monetary damages under Rule 23(b)(3), and for  
16 liability issues under Rule 23(c)(4).

17           157.     The number of persons who fall within the definitions of the Class are  
18 so numerous and geographically dispersed as to make joinder of all members of the  
19 Class or Subclass in their individual capacities impracticable, inefficient, and  
20 unmanageable, and without class-wide relief, each member of the Class would  
21 effectively be denied his, her, or their rights to prosecute and obtain legal and  
22 equitable relief based on the claims and allegations averred in the Complaint.

23           158.     Plaintiffs, as detailed below, can fairly and adequately represent the  
24 proposed Class. In the alternative, Plaintiffs can act as the representatives of the  
25 below subclasses.

26     **B.     Proposed Subclasses**

27           159.     Additionally, or in the alternative, pursuant to Federal Rule of Civil  
28 Procedure 23(c)(5), Plaintiffs bring this action on behalf of the following subclasses:

1           160.     **The Denial Subclass:** All Members of the Class whose applications  
2 were denied but would have been approved had such applications been submitted by  
3 similarly situated non-Minority Applicants.

4           161.     **The Delayed, Higher Rate or Less Favorable Terms Subclass:** All  
5 Members of the Class whose applications were (a) processed at a rate slower than  
6 that of the average processing time of applications submitted by non-Minority  
7 Applicants; or (b) whose applications were eventually approved, but at higher  
8 interest rates or subject to less favorable terms than similarly situated non-Minority  
9 Applicants.

10          162.     Depending on the evidence developed during discovery, Plaintiffs  
11 reserve the right to amend the definitions of the Classes and Subclasses and/or seek  
12 the certification of further subclasses based on race, ethnicity or the type of  
13 transactions at issue (e.g., original purchase mortgage loans, refinancing or  
14 modification).

15 **C.   Numerosity and Ascertainability**

16          163.     **Numerosity.** While the exact numbers of the members of the Class  
17 and Subclasses are unknown to Plaintiffs at this time, membership in the Class and  
18 Subclasses may be ascertained from the records maintained by Defendants. At this  
19 time, Plaintiffs are informed and believe that the Class and Subclasses include  
20 thousands of members. Therefore, the Class and Subclasses are sufficiently  
21 numerous that joinder of all members of the Class and Subclasses in a single action  
22 is impracticable under Rule 23(a)(1) of the Federal Rules of Civil Procedure, and the  
23 resolution of their claims through a class action will be of benefit to the parties and  
24 the Court.

25          164.     **Ascertainability.** The names and addresses of the members of the  
26 Class and Subclasses are in Defendants' possession and/or contained in Defendants'  
27 records. Notice can be provided to the members of the Class and Subclasses  
28 through direct mailing, email, publication, or otherwise using techniques and a form

1 of notice similar to those customarily used in consumer class actions arising under  
2 state and federal law.

3 **D. Commonality and Predominance**

4 165. This matter involves common questions of law and fact which  
5 predominate over any question solely affecting individual Class Members.

6 166. The common questions of law and fact include, but are not limited to:

- 7 • Whether Defendants systematically discriminated against Class  
8 Members on account of their race or ethnicity;
- 9 • Whether Defendants' underwriting algorithms and machine  
10 learning programs were racially biased and led to unfairly  
11 discriminatory credit policies that harmed Minority Applicants;
- 12 • Whether the disparate impact of Defendants' underwriting  
13 algorithm and machine learning programs on Minority  
14 Applicants was known to Defendants during the relevant time  
15 period, leading to the uniform disparate treatment of those  
16 Minority Applicants;
- 17 • Whether Minority Applicants' residential loan applications were  
18 processed at a rate slower than the average processing time for  
19 applications submitted by non-Minority Applicants;
- 20 • Whether Minority Applicants' residential loan applications were  
21 denied when a similarly situated non-Minority Applicant would  
22 have been approved;
- 23 • Whether Minority Applicants' resulting residential loans were  
24 made at higher interest rates as compared to similarly situated  
25 non-Minority Applicants;
- 26 • Whether Defendants selected disproportionately white areas for  
27 rapid refinancing evaluation and disproportionately Minority  
28 Applicant areas for increased scrutiny;
- Defendants' knowledge of their practices and the discriminatory  
impact on Minority Applicants;
- Whether Defendants' lending policies and practices had an  
unlawful disparate impact against Minority Applicants;
- Defendants' consumer disclosures and omissions;
- Defendants' internal approval processes;
- Defendants' appraisal policies; and

- Whether Defendants engaged in discriminatory practices with malice or reckless indifference to the federally protected rights of Minority Applicants.

167. **Predominance.** Class action status is warranted under Rule 23(b)(3) of the Federal Rules of Civil Procedure because questions of law or fact common to the members of the Class and Subclasses predominate over any questions affecting only individual members. The interests of the members of the Class and Subclasses in individually controlling the prosecution of separate actions are theoretical and not practical. Prosecution of this action through multiple Class Representatives would be superior to individual lawsuits. Plaintiffs are not aware of any potential difficulty in the management of this litigation that should preclude its maintenance as a class action.

#### **E. Typicality and Adequacy**

168. Plaintiffs' claims are typical of the other Class Members' claims because all Class Members were injured as a result of substantially similar conduct by Defendants.

169. Plaintiffs are adequate Class Representatives because their interests do not conflict with the interests of the other members of the Class and Subclasses they seek to represent, and Plaintiffs have retained counsel that will represent separate subclasses if any conflicts arise based on race, ethnicity, or the type of transaction at issue. Plaintiffs have retained counsel competent and experienced in complex class action litigation, and Plaintiffs intend to prosecute this action vigorously. The Class and Subclasses' interests will be fairly and adequately protected by Plaintiffs and their counsel.

#### **F. Superiority**

170. A class action is the superior method for the fair and efficient adjudication of this matter because the damages and other harms suffered by Plaintiffs and the other Class Members are small compared to the burden and expense of individual litigation. Thus, it would be impractical, if not impossible, for

individual plaintiffs to seek redress against Defendants for the harms suffered.

171. Individual litigation of these harms would also be inefficient for the court system and would create a risk of inconsistent or contradictory rulings and judgments.

172. No unusual circumstances exist that would make this matter more difficult to manage than a typical class action.

### **G. Injunctive Relief**

173. Plaintiffs also seek to represent a class under Rule 23(b)(2) to obtain final injunctive relief forcing Wells Fargo to cease and desist its current discriminatory practices.

### **H. Issue Certification**

174. As an alternative to Rule 23(b)(2) and/or 23(b)(3), Plaintiffs seek issue certification under Rule 23(c)(4) of liability issues common to Class members.

## **COUNT I**

### **VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**

#### **15 U.S.C. § 16901, *et seq.***

175. Plaintiffs, on behalf of themselves and all those similarly situated, incorporate by reference each and every paragraph above as though fully realleged herein.

176. The Equal Credit Opportunity Act makes it unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race.

177. The Equal Credit Opportunity Act applies to applications for residential loans for original purchase mortgages and mortgage refinancing) like those of the Plaintiffs and others similarly situated. Plaintiffs and those similarly situated applied for credit by seeking to finance their home purchases or refinance their existing home loans.

178. Defendants are creditors because they regularly extend, renew, and

1 continue issuances of credit.

2 179. Defendants' consistent delays, roadblocks, feigned difficulties, and  
3 denials of residential loan applications submitted by Minority Applicants constitute  
4 race-based discrimination forbidden by the Equal Credit Opportunity Act.

5 180. Plaintiffs and all those similarly situated were harmed by Defendants'  
6 conduct.

7 181. On behalf of themselves and the Class they seek to represent,  
8 Plaintiffs request the relief set forth below.

9 **COUNT II**

10 **RACE DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT**  
11 **OF 1968, 42 U.S.C. § 3601, *et seq.***

12 182. Plaintiffs incorporate by reference each and every paragraph above as  
13 though fully realleged herein.

14 183. The Fair Housing Act makes it unlawful to discriminate against  
15 designated classes of individuals in residential real estate transactions, including  
16 residential lending.

17 184. Plaintiffs and others similarly situated sought to engage in residential  
18 real estate transactions with Defendants.

19 185. Plaintiffs and others similarly situated are members of a protected  
20 class under the Fair Housing Act.

21 186. Defendants discriminated against Plaintiffs and others similarly  
22 situated by not approving residential loan applications on the same timeline as those  
23 of similarly qualified applicants who were not members of a protected class, by  
24 causing applicants to withdraw their applications due to roadblocks and feigned  
25 difficulties, or by denying residential loan applications.

26 187. Defendants refused to transact business with Plaintiffs and those  
27 similarly situated during the Class Period and at the same time did transact business  
28 with White, Not Hispanic or Latino applicants with similar qualifications.

188. Plaintiffs and those similarly situated were injured by Defendants' refusal to transact business with them because they paid application fees for residential loan applications that were delayed or denied, because they continued to pay higher interest rates while their delayed applications were pending, because they were charged higher interest rates than similarly qualified applicants, and/or because their applications were denied.

### **COUNT III**

#### **RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981**

189. Plaintiffs incorporate by reference each and every paragraph above as though fully realleged herein.

190. Under 42 U.S.C. § 1981, persons are guaranteed the same right to make and enforce contracts, regardless of race. The term "make and enforce" contracts includes the making, performance, modification, and termination of contracts, as well as all other aspects of a contractual relationship.

191. By seeking to refinance their home loans and submitting an application to Defendants, Plaintiffs and others similarly situated sought to "make and enforce" contracts with Defendants.

192. Plaintiffs and those similarly situated were denied their right to make and enforce contracts when Defendants offered to them terms less favorable than those offered to members of a different race, delayed or frustrated their application process, and/or by denied their applications.

193. Plaintiffs and those similarly situated were harmed by Defendants' denial of their rights to make and enforce contracts.

### **COUNT IV**

#### **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE §51**

194. Plaintiffs incorporate by reference each and every paragraph above as though fully realleged herein.

## **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

201. The California Unfair Competition Law (the “UCL”) prohibits “unfair competition” which is defined as “any unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. Because the definition is framed in the disjunctive, a business act or practice need only meet one of the three criteria in order to be considered unfair competition. The UCL was intentionally framed in broad, sweeping language because it was impossible to contemplate the “innumerable new schemes which the fertility of man’s invention would contrive.”

24           202.     The UCL provides that “[a]ny person who engages, has engaged, or  
25 proposes to engage in unfair competition may be enjoined in any court of competent  
26 jurisdiction” and that “[t]he court may make such orders or judgments...as may be  
27 necessary to restore to any person in interest any money or property, real or  
28 personal, which may have been acquired by means of such unfair competition.”

1 Cal. Bus. & Prof. Code § 17203(a).

2 203. Defendants are “persons” within the UCL’s definition, which includes  
3 any ‘natural persons, corporations, firms, partnerships, joint stock companies,  
4 associations and other organizations of persons.’ Cal. Bus. & Prof. Code § 17201.

5 204. Defendants’ conduct described herein and its discriminatory policies  
6 were made, disseminated, and orchestrated from Defendants’ principal place of  
7 business in California.

8 205. Defendants’ conduct described herein constitutes an “unlawful”  
9 business practice, as the business acts described above constitute predicate  
10 violations of the laws identified herein; namely, the Equal Credit Opportunity Act,  
11 the Fair Housing Act, 42 U.S.C. § 1981, and the Unruh Civil Rights Act.

12 206. Defendants’ conduct described herein also constitutes a “fraudulent”  
13 business practice. Defendants uniformly fail to disclose and inform Minority  
14 Applicants that Defendants engage in redlining that will negatively impact Minority  
15 Applicants’ chances of having their loan or refinance application approved, the  
16 terms of their loans, and/or the time it will take for their application to be reviewed  
17 and approved. Defendants had a duty to disclose this information because: (1) it is  
18 material and important information that would impact a Minority Applicant’s  
19 decision to apply for a mortgage or seek to refinance an existing mortgage with  
20 Defendants over other banks and lenders; (2) Defendants have exclusive knowledge  
21 of their redlining practices; and (3) these practices could not be reasonably  
22 discovered by Minority Applicants. This information is also contrary to Minority  
23 Applicants’ reasonable expectations that Defendants would not engage in illegal  
24 redlining and discrimination. By failing to disclose this information, Minority  
25 Applicants were fraudulently induced to pay application and related fees to  
26 Defendants that the Minority Applicants would not have paid had they known the  
27 true information.

28 207. Defendants’ conduct described herein also constitutes an “unfair

1 business” practice, as it is likely to deceive the public and it has far less utility than  
2 its potential harm. In direct contradiction of its public pronouncements regarding a  
3 commitment to diversity and equality, Wells Fargo employed practices and policies  
4 that led to racial and ethnic bias against Minority Applicants, which resulted in  
5 disparate approval rates for residential loan applications. Wells Fargo effectively  
6 engaged in “digital redlining” and knew this was material information that would  
7 cause Minority Applicants to submit their original purchase mortgage loan and  
8 refinance applications to its competitors. Wells Fargo collects significant  
9 application fees and appraisal fees as part of each original purchase mortgage loan  
10 and refinancing application, even if the application is ultimately denied. Wells  
11 Fargo did not want to lose this revenue source, which is partly why it did not  
12 disclose its true practices to Minority Applicants and provided false statements  
13 and/or half-truths with respect to its commitment to diversity and equality in its  
14 mortgage lending practices. Plaintiffs and the Minority Applicants would not have  
15 agreed to apply for residential loans with Wells Fargo, or pay the associated  
16 application and appraisal fees, had Wells Fargo properly disclosed and reported all  
17 material facts related to its residential loan application process.

18 208. Defendants’ mortgage refinancing business is a business activity  
19 under the UCL.

20 209. Plaintiffs and those similarly situated were injured by Defendants’  
21 refusal to transact business with them because they paid application fees for  
22 residential loan applications that were delayed or denied, because they continued to  
23 pay higher interest rates while their delayed applications were pending, because they  
24 were charged higher interest rates than similarly qualified applicants, and/or because  
25 their applications were denied.

26 210. Plaintiffs and the Class are entitled to restitution of all fees paid by  
27 them based on Defendants’ unlawful, fraudulent, and unfair business practices, as  
28 well as injunctive relief to protect the public from these practices in the future, as the

1 damage caused thereby is difficult (if not impossible) to calculate.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs respectfully request that this Court:

- 4 a. Certify the 23(b)(2), 23(b)(3) or 23(c)(4) classes outlined above;
- 5 b. Designate Plaintiffs as Class Representatives and designate
- 6 undersigned counsel as lead Class Counsel;
- 7 c. Find that Defendants' acts described herein violate the Equal Credit
- 8 Opportunity Act, the Fair Housing Act, 42 U.S.C. § 1981, the Unruh
- 9 Civil Rights Act, and the California UCL;
- 10 d. Find that Defendants have engaged in a pattern and practice of racial
- 11 discrimination resulting in the harm to Plaintiffs and class members as
- 12 described above;
- 13 e. Award Plaintiffs and all others similarly situated restitutionary relief,
- 14 together with compensatory and punitive damages;
- 15 f. Order Defendants to reform loans and/or extend loans to Minority
- 16 Applicants on the same terms afforded to non-Minority Applicants.
- 17 g. Award Plaintiffs and all others similarly situated injunctive and
- 18 equitable relief;
- 19 h. Award Plaintiffs and all others similarly situated prejudgment interest
- 20 and attorney's fees, costs, and disbursements; and
- 21 i. Award Plaintiffs and all others similarly situated such other relief as
- 22 this Court deems just and proper.
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- 28

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury of all issues so triable.

DATED: March 24, 2023

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By: /s/ Dennis S. Ellis

Dennis S. Ellis  
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20 Laronica Johnson  
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**ATTORNEY ATTESTATION**

**Attestation under N.D. Cal. L.R. 5-1(h):** the ECF filer of this document attests that all of the other signatories have concurred in the filing of the document, which shall serve in lieu of their signatures on the document.

/s/ Dennis S. Ellis

Dennis S. Ellis